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**STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW**

EDITED BY THE FACULTY OF POLITICAL SCIENCE OF  
COLUMBIA UNIVERSITY

Volume XXVIII]

[Number 1

# De WITT CLINTON

AND THE

## ORIGIN OF THE SPOILS SYSTEM IN NEW YORK

BY

HOWARD LEE McBAIN, Ph.D.,  
*Sometime Honorary Fellow in Constitutional Law,  
Columbia University*



New York

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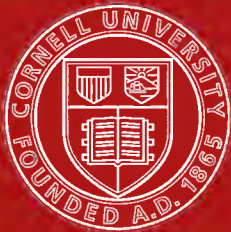
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**DeWITT CLINTON AND THE ORIGIN OF THE  
SPOILS SYSTEM IN NEW YORK**



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## CHAPTER I

### EARLY PATRONAGE UNDER THE CONSTITUTION

THE name of DeWitt Clinton has been associated for a long time with all that is reprehensible in connection with the introduction of the so-called spoils system into the politics of New York. Not only has the extent to which he carried the policy of removal from office been overestimated but many other phases of his plan of distributing the patronage have been the subject of misrepresentation. Even so eminent a scholar as Mr. Henry Adams expresses the opinion that he was hardly less responsible than Burr for lowering the standard of New York politics and indirectly that of the nation,<sup>1</sup> and in another connection this distinguished historian makes the unqualified assertion that Clinton, urged on by political self-interest, swept out of office every federalist in New York to make room for his republican supporters.<sup>2</sup> Nor is extravagance of statement the only error into which Mr. Adams has fallen. He quite unjustly accuses Clinton of giving undue preference to his own family connections<sup>3</sup> and of adopting a policy of total exclusion toward the political adherents of his rival, Aaron Burr, in the distribution of both federal and state offices.<sup>4</sup> Similar views have been expressed by historians both before and since Mr. Adams wrote,<sup>5</sup> and a

<sup>1</sup> Henry Adams, *History of the United States*, i, 112.

<sup>2</sup> *Ibid.*, i, 228, 229.

<sup>3</sup> *Ibid.*, i, 229.

<sup>4</sup> *Ibid.*, i, 230 *et seq.*

<sup>5</sup> Hammond, *History of Political Parties in New York*, i, 173-180; Hildreth, *History of the United States*, v, 425; Schouler, *History of the United States*, ii, 33; Roosevelt, *New York*, 161, 162, 177; Alexander,

general impression has gone abroad that, when Clinton first came to wield his power in New York, he instituted so drastic a proscription of his political opponents and so thoroughgoing an exclusion of those elements of his own party that were inimical to his personal interests that his conduct can find explanation only in the belief that he was moved by an overmastering spirit of selfishness, and that anything like a guiding principle must have been wholly foreign to his thought and purpose.

Unfortunately for the fame of Clinton the materials for a complete study of his policy in the distribution of the New York patronage have never been carefully sifted, although they have not been wholly inaccessible. The manuscript files of the council of appointment, which throw a flood of light upon the history of patronage, lie as yet unorganized and unmounted.<sup>1</sup> The manuscript minutes of the council<sup>2</sup> have been used to some extent,<sup>3</sup> but nothing like an exhaustive study of them has hitherto been made. The public papers of George Clinton,<sup>4</sup> which have received only occasional investigation, offer an invaluable source of information upon every phase of New York politics during the interesting period of his life; while the DeWitt Clinton papers,<sup>5</sup> the newspapers and pamphlets of the time, the legislative journals and the numerous printed collections of correspondence and writings are alike indispensable aids to a fair understanding of the share which the younger Clinton had in the introduction of the system of spoils in New York. It is primarily upon these documents and papers that the present study is based.

*Political History of New York*, i, 116-121; Channing, *The Jeffersonian System*, 17, 18.

<sup>1</sup>New York State Library.

<sup>2</sup>Office of the Secretary of State.

<sup>3</sup>Hammond, *History of Political Parties in New York*, *passim*.

<sup>4</sup>Mounted and calendared, New York State Library.

<sup>5</sup>Mounted but not calendared, Columbia University Library.

It was not until 1801, after the federal government had been in operation twelve years, that DeWitt Clinton came forward as the chief factor in the distribution of offices in New York. It is impossible adequately to understand the conditions which confronted him in that year without a thorough knowledge of the civil-service policies which had been adopted by George Clinton, governor of the state from its formation until the year 1795, and by John Jay who as his successor remained in office down to 1801. Every feature of DeWitt Clinton's plan of parcelling out the patronage of the state found some authority in the practice which had preceded him. His policy differed only in the very substantial increase which he made in the number of removals for reasons of politics. And it will be shown that, like Mr. Jefferson, he justified his whole attitude with reference to the patronage upon the course of exclusion toward his own party which had been pursued by the retiring federalists. The spoils system in the broader sense of the term had existed in New York long before DeWitt Clinton came into power. For very obvious reasons, therefore, it is necessary to trace in some detail the history of patronage in the state prior to the victory which placed the republicans in power at the opening of the nineteenth century.

For reasons not altogether different it seems advisable also to outline the federal practice which had obtained during the administrations of Washington and John Adams. It is true that this has already been made the subject of careful research,<sup>1</sup> and that the material for its investigation lies very largely in accessible form in the printed correspond-

<sup>1</sup> Fish, *Civil Service and the Patronage*, 6-28; Galliard Hunt, "Office Seeking during Washington's and Adams's Administrations," *American Historical Review*, i, 270-283; ii, 241-261; *Rhode Island Historical Society Publications*, viii, 104-135; *American Historical Association, Reports*, 1899, 67-86; *ibid.*, *Papers*, 314-322.

ence of the period. It is hoped, nevertheless, that some new light can be thrown upon the policies of the early federal administrations, particularly in regard to the distribution of patronage in New York. But the study of the federal practice in conjunction with that which prevailed in the states is more especially required by reason of the fact that the policies adopted by the national and local governments exerted a strong influence each upon the other. Certain it is that there is a marked similarity of development between them; and there are very good reasons why this similarity should have existed. In the first place, the state governments still retained, in the estimation of the statesmen of the day, an importance by no means overshadowed by that of the federal government. The frequency of resignations from federal offices to accept appointments in the states is a sufficiently worthy record of the opinion that was entertained as to the parity of importance between the parts of the new governmental system. The general government was far from refusing to profit by the experience of the states, and the state governments in turn watched with jealous interest every detail of the affairs of the nation. Moreover, it must be remembered that in spite of the tremendous distances and the difficulties that attended upon travel, the personal ties between the great statesmen of the republic were perhaps far stronger than they have ever been since. The whole population of the country, confined largely to the eastern shore of the continent, was very small; the number of political people was much smaller; and the real leaders, even including those of strictly local fame, were comparatively few. They were all more or less acquainted with one another, and the exchange of ideas in the long personal letters which passed between them served to develop a certain unity of opinion upon questions of public interest and to set in motion uniform influences that were the begin-



nings of a genuine spirit of nationality. In the questions which arose over the distribution of patronage this interchange of ideas must have exerted its influence, and it is impossible to believe that the republican leaders, both national and local into whose hands the power of the patronage fell by the turn of events in 1800, were not fully acquainted with the policies which had been pursued by those who had preceded them in the administration of the government.

The plan of the present study, therefore, is to examine carefully the whole development of the civil service both in the national government and in New York from the time of the establishment of the federal constitution down to the year 1801, which marked the first change of political parties in the nation. The policies of the national government will be shown to have a more or less definite connection with those which were pursued in the state, and the former will be viewed with especial reference to the appointment of federal officers in New York. Not only will this plan of presentation serve to show the extent of DeWitt Clinton's departure from precedents which had been established but it will afford the opportunity for a systematic development of the history of the early patronage in New York in its vital relation to the larger questions of politics.

When in 1789 Washington was by the unanimous choice of the nation called from his retirement to become the first president, almost the leading of the difficult problems which confronted him was that of appointing "by and with the advice and consent of the senate" the executive officials for which the constitution and supplemental legislation had provided. The adoption of the constitution had not been effected without engendering much bitterness; and the mere fact of its adoption did not by any means lift it above the

plane of the experimental. The great body of Washington's letters written at this time show that he fully realized the importance which his distribution of the patronage would play in allaying the factious spirit of opposition which had arisen. Writing to Samuel Vaughan in March, 1789, he said:

I have no conception of a more delicate task than that which is imposed by the constitution on the executive. It is the nature of republicans, who are nearly in a state of equality, to be extremely jealous as to the disposal of all honorary and lucrative appointments. Perfectly convinced I am, that, if injudicious or unpopular measures should be taken by the executive under the new government, with regard to appointments, the government itself would be in the utmost danger of being subverted by those measures. So necessary is it at this crisis to conciliate the good will of the people, and so impossible it is, in my judgment, to build the edifice of public happiness but upon their affections.<sup>1</sup>

Indeed he avowed as one of his chief motives in giving up his cherished retirement from public life the "desire to reconcile contending parties"<sup>2</sup> so far as in him lay. Aside from these difficulties, however, Washington was peculiarly unembarrassed in the matter of his appointments to office. From many of the trials which faced most of his successors in office he was free. The problem of removals did not exist, for all of the offices were creations of the new constitution which had illegally, perhaps, but none the less effectually, abrogated the Articles of Confederation and in consequence every office held under that government. There were no election debts to pay, for he was under obligations to no party or faction.<sup>3</sup>

<sup>1</sup> Washington, *Writings* (Ford ed.), xi, 368, note.      <sup>2</sup> *Ibid.*, 366.

<sup>3</sup> January 1, 1789, Washington wrote to Samuel Hanson: "If I

In fact no political parties existed. It is true that on the question of the adoption of the constitution the country had divided so evenly that for many months its fate had hung in the balance. But the ultimate success with which it had emerged from uncertainty at the hands of at least ten of the state conventions had of itself destroyed the only issue upon which the country had been divided. It was only when the newly formed government had developed certain well-defined foreign and domestic policies that issues were raised upon which political parties could formulate their creeds. That these parties corresponded in personnel roughly to the adoptionists and anti-adoptionists of 1788 is not here germane.

A narrower man than Washington or a man with less intelligent appreciation of the great need for universal co-operation in launching the government would undoubtedly have justified to himself the confinement of his appointments to those who had fought for the establishment of the constitution, on the ground that the new system demanded for its successful management only those who had shown a strong belief in its possibilities. But he was sane enough to realize that not every man in the minority had been guilty either of sinister motives or of a lack of intelligence. In May, 1789, he wrote :

I find that the good and respectable characters from every quarter are determined to give it [the constitution] their countenance and support, notwithstanding some of them apprehended, that evils might arise from particular parts of it.

should once more be led into the walks of public life, it is my fixed determination to enter there, not only unfettered by promises, but even unchargeable with creating or feeding the expectation of *any man living* for my assistance to office;" Washington, *Writings* (Ford ed.), xi, 349, note.

Those, who opposed the constitution before its adoption from principle were pretty generally convinced of the necessity of a change in our former confederation; but its being accepted by so large a part of the community, the harmony which prevails in the legislature, and the prospect of having those apprehensions done away by some alteration, have induced them to say with you, that "it is the duty of every good citizen to rejoice in every measure calculated to carry it into operation, agreeably to the principles on which it was adopted."<sup>1</sup>

And there is no evidence in the many letters written at this time touching upon his policy with regard to appointments that Washington permitted himself to be influenced to any extent by the attitude which candidates had assumed upon the question of adoption. In the case of Rhode Island there is a slight possibility that he may have been urged to some discrimination by reason of the sustained violence of the opposition. He may have felt that the security of new establishment in this state, which had remained out of the Union under the constitution for so many months, demanded less liberality toward the political views of candidates. Certain it is that many of the applicants for office who wrote to him from Rhode Island offered in support of their claims that they had favored the adoption of the constitution.<sup>2</sup> Of the eighteen nominees to the federal offices in Rhode Island whose names Washington submitted to the Senate<sup>3</sup> in June, 1790, however, only four had been members of the ratifying convention in that state. Three of these had voted for adoption,<sup>4</sup> while one of them, Job

<sup>1</sup>Washington, *Writings* (Sparks ed.), x, 7.

<sup>2</sup>Gaillard Hunt, "Office-Seeking during Washington's Administration," *American Historical Review*, i, 274, 278-9; *Rhode Island Historical Society Publications*, viii, 107-109, 129-135.

<sup>3</sup>*Executive Journal of the Senate*, i, 51, 53, 54.

<sup>4</sup>*Ibid.*, i, 51, 53. William Barton, appointed surveyor of the port of

Comstock, had been a leader of the opposition.<sup>1</sup> Theodore Foster, appointed to the naval office at Providence which he had held under the state government, appears to have been something of a trimmer between the factions.<sup>2</sup> He resigned his appointment immediately to take a seat in the United States senate, and Ebenezer Thompson, formerly collector of the port and an avowed oppositionist,<sup>3</sup> was appointed to the vacancy.<sup>4</sup> Two others whom Washington nominated for office in Rhode Island had at least opposed the constitution at one stage in the history of its adoption.<sup>5</sup> And it may be added that in some instances those who were appointed to office do not appear to have presented nearly as strong claims of service in behalf of the constitution as other rejected applicants for the same office.<sup>6</sup> In the light of these facts Washington's attitude toward the opponents of the constitution in Rhode Island falls far short of a total exclusion. Indeed the strongest evidence that he made any discrimination against them is the fact that apparently in this state only was the subject of politics brought forward in the applications for office;<sup>7</sup> and this at best is an un-

Providence, Henry Marchant, appointed judge of the district of Rhode Island, and George Stillman, appointed surveyor of the port of Pawtucket. For their votes on the constitution see Staples, *Rhode Island in the Continental Congress*, 672, 673.

<sup>1</sup> Journal of Proceedings of the Convention, printed in Staples, *op. cit.*, 640-673.

<sup>2</sup> *Rhode Island Historical Society Publications*, viii, 134, 135.

<sup>3</sup> *Ibid.*, 135.

<sup>4</sup> *Executive Journal of the Senate*, i, 53.

<sup>5</sup> Thomas Arnold, surveyor of East Greenwich and Daniel E. Updike, surveyor of North Kingstown; Staples, *op. cit.*, 591, 594.

<sup>6</sup> For example William Ellery, who took no very active part in the struggle for adoption, was appointed collector of the port of Newport (*Executive Journal*, i, 51), an office sought by John Collins, who as governor of the state had cast the deciding vote for the adopting convention (*American Historical Review*, i, 279, 280).

<sup>7</sup> *Ibid.*, i, 278, 279.

certain indication of the extent to which such claims were considered.

It is true also that Washington appointed to office many who had distinguished themselves by service in the Revolution and that this fact was urged in support of their appeals for consideration.<sup>1</sup> There is little evidence, however, that Washington ever considered such claims as outbalancing superior merit. He indeed frankly admitted that "the comparative claims from the former merits and sufferings in service of the different candidates" constituted an essential consideration, but he was careful to place "fitness of character" first.<sup>2</sup> To a widow whose husband had lost his life in the war, Washington wrote that he could not consult his private inclinations in the matter of appointments and that he would nominate only such as "shall be best qualified to discharge the functions of the departments to which they shall be appointed."<sup>3</sup> It is not unreasonable to assume, moreover, that Washington had in many cases some personal knowledge of the fitness of the appointees who had been in the military service of their country during the period of the Revolution.<sup>4</sup> At most there is a wide gulf stretching between rewards for service upon the field of battle, rendered for the common interest of all, and rewards for service rendered in the interest of

<sup>1</sup>Gaillard Hunt, "Office-Seeking during Washington's Administration," *American Historical Review*, i, 276.

<sup>2</sup>Washington, *Writings* (Ford ed.), xi, 367, note.

<sup>3</sup>May 21, 1789, *ibid.*, xi, 394.

<sup>4</sup>As in the case of Benjamin Fishbourn whom the Senate declined to confirm as naval officer of the port of Savannah. In a message containing a mild reproof of this action Washington gave among other reasons for the nomination that while Fishbourn was "an officer, in active service and chiefly under my own eye, his conduct appeared to me irreproachable;" *Executive Journal of the Senate*, i, 16. This is perhaps the only case of senatorial rejection of a nomination made by Washington; Irving, *Life of Washington*, v, 22-24.

a particular political party. Surely in the former there is traceable no element of the spoils system as that term is applied in the later development of the history of the patronage.<sup>1</sup>

On the whole it seems reasonably well sustained that Washington adhered very closely to a rigid policy in the matter of appointments—a policy which he laid down for his guidance even before entering office. The elements of that policy were: (1) a refusal to make any promises previous to nomination; <sup>2</sup> (2) an effort to gather information concerning candidates from all possible sources; <sup>3</sup> (3) a judgment as between candidates based primarily on the greatest fitness for the office to be filled, special consideration being given to those who had filled analogous offices under the state governments; <sup>4</sup> (4) the distribution of appointments with fair proportion among the several states. <sup>5</sup> (5) the determination not to lay himself open to the charge of nepotism, nor to consider friendship alone as sufficient basis for public preferment. <sup>6</sup> It is not to be gainsaid that these elements constitute the broadest possible platform that is compatible with a conscientious desire to distribute the patronage with punctilious regard for the principle of impartiality; nor is it to be doubted that Washington was scrupulously honest in his effort to make them something more than a vision and a theory of words. And his suc-

<sup>1</sup> For a contrary view, see *American Historical Review*, i, 282.

<sup>2</sup> Washington, *Writings* (Ford ed.), xi, 349, note; 366, 367, 368, note; xii, 17.

<sup>3</sup> *Ibid.*, xi, 350, note; 395; Adams, *Works*, ix, 561; Rowland, *Life and Correspondence of Charles Carroll*, ii, 204; Jay, *Correspondence and Public Papers*, iv, 197, 198.

<sup>4</sup> Washington, *Writings* (Ford ed.), xi, 350, note; 389, 394, 395, note; 420.

<sup>5</sup> Washington, *Writings* (Ford ed.), xi, 367, note.

<sup>6</sup> *Ibid.*, xi, 367, note; 395, note.

cess justified the effort. But even with the favorable conditions under which he inaugurated the civil service policy of the United States, and upon the very threshold of his administration he wrote:

That part of the President's duty which obliges him to nominate persons for office is the most delicate, and in many instances will be, to me, the most unpleasing; for it may frequently happen that there will be several applicants for the same office, whose merits and pretensions are so nearly equal, that it will require the aid of supernatural intuition to fix upon the right. I shall, however, in all events, have the consolation of knowing that I entered upon my office unconfined by any engagements, and uninfluenced by any ties; and that no means in my power will be left untried to find out, and nominate those characters who will discharge the duties of their respective offices to the best interests and highest credit of the American Union.<sup>1</sup>

Whether Washington would have been able to stand so rigidly upon a platform of "fitness for office" had political conditions been other than they were is, to say the least, questionable. In the light of subsequent developments it is interesting to note that very early in his administration he came to realize that it would be expedient in some instances to find berths for certain men whether an office sought them unmistakably or not. Writing to Madison in August, 1789, he asks:

Would it do *now* that Mr. Bartow has declined the Judge's Seat (Western Territory) to nominate Col. Carrington for that office?—If not, can you think of any other that would suit him, of new creation; by this I mean, which has not an

<sup>1</sup>To Joseph Jones, May 14, 1789, Washington, *Writings* (Ford ed.), xi, 394, note. See also letter to John Armstrong, February 6, 1791, *ibid.*, xii, 17.



actual occupant, or some one who, from similarity of Office, may have better pretensions to it . . . . .

What can I do with A[rthur] L[ee]? He has applied to be nominated one of the Associate Judges, but I cannot bring my mind to adopt the request. The opinion entertained of him by those with whom I am most conversant, is unpropitious, and yet few men have received more marks of public favor and confidence than he has. These contradictions are embarrassing.<sup>1</sup>

It was only a few years after Washington became president that political parties began to emerge from the growing conflict of opinions and to assume certain well-defined views upon the policies of the administration. The chiefs of these parties were members of his cabinet, and he was in consequence subjected to the embarrassment of political factions among his own chosen advisers. Dissensions and estrangements upon matters of politics soon became the order of the day, and the republican press of the country in the hands of such men as Freneau, Bache, Duane and Callendar sought to pillory the president with virulent criticism. There is little wonder that Washington came to regard political orthodoxy so far as the policies of the administration were concerned as a necessary qualification for office-holding. That he did so regard it, at least in the case of important offices, we have his own words in evidence. "I should consider it an act of governmental suicide," he wrote to Edward Carrington in 1795, "to bring a man into so high a office [Secretary of State], who was unfriendly to the constitution and laws, which are to be his guide."<sup>2</sup> And again, to Timothy Pickering, in regard to filling the office of Attorney General, "I shall not, whilst I have the

<sup>1</sup> Washington, *Writings* (Ford ed.), xi, 420, 421.

<sup>2</sup> Washington, *Writings* (Ford ed.), xiii, 115.

honor to administer the government, bring a man into any office of consequence knowingly, whose political tenets are adverse to the measures, which the general government are pursuing.”<sup>1</sup> If Washington intended this literally, it might well be argued that there is no very great step between an “office of consequence” and an office of inconsequence. At any rate there is certainly some indication that before the close of his executive service, Washington came to believe that the political attitude of a candidate could not be wholly ignored.

It has been said that the influence of Hamilton was exerted with the president to secure the appointment in New York of those who were friendly to the constitution,<sup>2</sup> and that the object of this discrimination was to weaken the power of George Clinton, the leader of the party of the opposition in that state. An examination of the complete list of Washington’s early New York appointments, however, indicates little if any Hamiltonian influence. It is true that the federal judge and the attorney nominated for the district of New York<sup>3</sup> had favored the adoption of the constitution.<sup>4</sup> But if we may judge by the previous history of his other appointees in New York, Washington was far more influenced by their military services, his knowledge of them from a personal acquaintance with them, or by the fact that they had held analogous offices under the state government. William S. Smith, appointed marshal of the district,<sup>5</sup> had been one of his *aides*<sup>6</sup> as well as hav-

<sup>1</sup> Washington, *Writings* (Ford ed.), xiii, 107.

<sup>2</sup> Hammond, *History of Political Parties in New York*, i, 31; Fish, *Civil Service and the Patronage*, 15; Roosevelt, *New York*, 160; Alexander, *Political History of New York*, i, 44.

<sup>3</sup> *Executive Journal of the Senate*, i, 32.

<sup>4</sup> Elliot, *Debates*, ii, 412.

<sup>5</sup> *Executive Journal*, i, 32.

<sup>6</sup> Washington, *Writings* (Ford ed.), xiv, 433.

ing been previously singled out by him for favor.<sup>1</sup> To Benjamin Walker, another *aide*,<sup>2</sup> fell the naval office of New York.<sup>3</sup> Walker was personally on intimate terms with Washington,<sup>4</sup> and some time before had been private secretary to Governor Clinton.<sup>5</sup> Of the five other officers of the customs, three had held the same office under the state,<sup>6</sup> and one of these, John Lamb, as chairman of the society of opposition in New York, had been pre-eminently active in exerting his influence against the constitution.<sup>7</sup> John C. Ten Broeck, who was assigned to the office of surveyor of customs<sup>8</sup> at Hudson, a newly created port of entry,<sup>9</sup> had distinguished himself to a degree in the campaigns of Valley Forge and Yorktown.<sup>10</sup> While it is impossible to ascertain the attitude of most of these appointees upon the great question before the nation in 1788, it is a reasonable assumption at least that Washington in selecting them was guided by the same broad principles that directed his general policy. Whatever influence Hamilton may have had with him, an examination of the complete list of those appointed does not reveal a preponderance of names prominent in the agitation for the adoption of the constitution; while the study of their lives seems to indicate that Washington was influenced by considerations quite apart from politics.

The strength of Hamilton's influence in New York lay

<sup>1</sup> Washington, *Writings* (Ford ed.), x, 246, note.

<sup>2</sup> *Ibid.*, xiv, 433.

<sup>3</sup> *Executive Journal*, i, 10.

<sup>4</sup> Washington, *Writings*, (Ford ed.), x, 321, 424.

<sup>5</sup> Bagg, *Pioneers of Utica*, 67.

<sup>6</sup> *Executive Journal*, i, 10. John Lamb, appointed collector of New York, 1784; John Lasher, surveyor of customs, 1784; John Gelston, collector of Sag Harbor, 1784; MS. *Minutes of the Council of Appointment*, i, 288, 298.

<sup>7</sup> Leake, *Memoir of the Times of John Lamb*, 306.

<sup>8</sup> *Executive Journal*, i, 10.

<sup>9</sup> Miller, *Sketches of Hudson*, 34.

<sup>10</sup> Runk, *Ten Broeck Genealogy*, 131.

in New York City,<sup>1</sup> and over against it stood that of George Clinton in the state. Previous to 1789 Clinton had stood for the office of governor at each of the four successive elections since the adoption of the state constitution in 1777. On each occasion he had been chosen without much opposition.<sup>2</sup> With a military record of no mean pretensions, and a reputation for ability, simplicity, and sincere devotion to the public welfare of the state over which he presided as chief magistrate, he enjoyed the confidence of a political constituency that could not be easily diverted from him.

No small part of Clinton's influence in the state had of necessity originated in the large patronage which had been subject to his disposal during his long administration as governor. In order fully to understand what use he had made of this factor in his political upbuilding it is necessary to examine briefly the system by which offices were distributed in New York under the first constitution.

Prompted by the inherited distrust of the colonial governor, the convention which framed and promulgated that constitution<sup>3</sup> had sought to prevent any abuse of the power in the hands of the governor by providing for two councils to hold him in check—the one in the matter of his veto, the other in that of his appointments. The theory of a council to control and diminish the power of the single executive was a favorite one with the constitution makers of the early period. It found ardent advocates in the federal convention of 1787.<sup>4</sup> Hamilton had opposed such a council and

<sup>1</sup> In the election of delegates to the Poughkeepsie convention George Clinton received only 134 votes as compared with 2735 which went to John Jay; Munsell, *Annals of Albany*, i, 330; Leake, *op. cit.*, 332.

<sup>2</sup> *Civil List*, State of New York, 1888, 166.

<sup>3</sup> The constitution was chiefly the work of John Jay; Lincoln, *Constitutional History of New York*, i, 495 *et seq.*

<sup>4</sup> *Madison Papers*, iii, 1522, 1523.

in the Federalist papers had cited the construction of the New York executive with disapproval.<sup>1</sup> The exact wording of Article XXIII of the constitution which established the council of appointment was as follows:

That all officers, other than those who, by this Constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant-governor, or the president of the senate, when they shall respectively administer the government, shall be president and have a casting voice, but no other vote; and, with the advise and consent of the said council, shall appoint all of the said officers; and that a majority of the said council be a quorum; and further, the said senators shall not be eligible to the said council for two years successively.<sup>2</sup>

It was clearly the intention of the framers of this article to create a council representing the different sections of the state, whose brief tenure of one year would deny to its members the possibility of building up a machine of personal influence. The powers of the governor, the only standing member, would be effectually controlled, and the patronage of the state lifted out of the hands of a single man and placed upon a platform of equity, justice and wisdom. What they really accomplished was quite another thing. They failed to take into consideration two important possibilities—that of a governor and his council being at loggerheads, and the development of political parties. In the case of the former the language of the article was

<sup>1</sup> *Federalist* (Ford ed.), 472, 513, 514.

<sup>2</sup> Poore, *Charters and Constitutions*, ii, 1336.

not explicit as to the governor's exclusive power of nomination. In the case of the latter the system offered a splendid opportunity for the creation by the legislature of a more or less responsible executive.

During the periods of the revolution and subsequent confederation this method of distributing patronage in New York was followed without giving rise to any serious conflict of authorities. Governor Clinton easily dominated the successive councils of appointment. He was tactful, able, forceful. He had no great family influence behind him, but he enjoyed a keen quality of leadership and possessed the ability to inspire and hold the confidence of his constituents. There were no organized parties; there were no election debts to liquidate, for his re-election as governor was almost undisputed after 1777.<sup>1</sup> There is every reason to believe, judging from the general character of the man and from the fact that no conspicuous complaints were made against him, that Governor Clinton, while perhaps not unmindful of the necessity for strengthening himself politically, was nevertheless careful in seeking information,<sup>2</sup> in appointing only fit characters, and in making removals with discretion.<sup>3</sup> It is true that in 1785 Philip Schuyler urged upon Jay the necessity of his becoming a candidate for governor in opposition to Clinton, observing that

the person, at present in the chair of Government, so evidently strives to maintain his popularity at the expense of good Government, that it has given real concern to many, as well as to

<sup>1</sup> *Civil List*, State of New York, 1888, 166.

<sup>2</sup> As in the case of appointment in Tryon county, 1778; George Clinton, *Public Papers* (printed), ii, 621, 746-748. The Clinton papers elsewhere cited are the unpublished manuscript volumes.

<sup>3</sup> "You may rest assured, Sir, that I will remove no Man from Office without a Hearing, as to do it is inconsistent with the Idea I entertain of Public Justice." *Ibid.*, ii, 552.

myself. . . Not only the lowest but the most unworthy characters are countenanced by him and through his influence placed in offices of trust. Great part of the magistracy of this and the adjacent Western and Northern Counties are wretches that would disgrace the most despicable of all governments,—these serve his turn; and he abets a faction (privately as he thinks, but sufficiently notorious to those who have taken pains to be informed) which wishes to destroy both public and private Credit, and whose sole aim is to rise into importance on the ruin of others.<sup>1</sup>

It must be borne in mind, however, that Clinton had twice triumphed over Schuyler in the election of governor,<sup>2</sup> and that the latter still cherished the hope of ousting this man whose family and connections did “not entitle him to so distinguished a predominance.”<sup>3</sup> At any rate there is a characteristic ring of fairness and an element of just rebuke in Jay’s refusal to stand. In reply he wrote:

If the circumstances of the State were pressing, if real disgust and discontent had spread through the country, if a change had in the general opinion become not only advisable but necessary, and the good expected from that change depended on me, then my present objections would immediately yield to the consideration that a good citizen ought cheerfully to take any station which, on such occasions, his country may think proper to assign him. . . .<sup>4</sup>

In the federalist papers Hamilton also condemned in no uncertain terms the character of Clinton’s appointments.<sup>b</sup> But Hamilton was scarcely a fair critic. The one overmastering desire of his heart at that time was to see the

<sup>1</sup> John Jay, *Correspondence and Public Papers*, iii, 151.

<sup>2</sup> *Ibid.*, i, 141–144; *Civil List*, New York State, 1886, 166.

<sup>3</sup> John Jay, *op. cit.*, i, 147.

<sup>4</sup> *Ibid.*, iii, 155, 156.

<sup>b</sup> *The Federalist* (Ford ed.), 472, 514.

constitution become a thing of reality, and the fact that George Clinton stood as a powerful menace to the realization of his hopes could not have failed to color his opinion.

In the struggle which arose over the adoption of the federal constitution George Clinton became the leader of the vigorous opposition which developed in New York. There is little reason to believe that, in wielding the strong arm of his influence and prestige against adoption, he acted otherwise than from a sincere conviction that the proposed form of government would be a menace to the safety and welfare of the country.<sup>1</sup> Only a casual reading of his remarks upon the floor of the convention serves to reveal the intense earnestness of the man, whatever may be thought of the sophistry of his political science.<sup>2</sup> Chancellor Kent, who as a young man of twenty-five living in Poughkeepsie was in constant attendance upon the sessions of the convention, writes of him:

Though I felt strong prejudices against Governor Clinton, as the leader of the Anti-Federal party, yet during the course of that Convention, I became very favorably struck with the dignity with which he presided, and with his unassuming and modest pretensions as a speaker. It is impossible not to feel respect for such a man, and for a young person not to be somewhat over-awed in his presence, when it was apparent in all his actions and deportment that he possessed great decision of character and a stern inflexibility of purpose.<sup>3</sup>

Whether Clinton was or was not moved by sinister motives in opposing the adoption of the constitution, it is certain that he threw the weight of his political influence

<sup>1</sup> Elliot, *Debates*, ii, 359.

<sup>2</sup> For original drafts of speeches, see George Clinton, *Public Papers*, xxii, 5976-5978.

<sup>3</sup> Kent, *Memoirs and Letters of Chancellor Kent*, 306.



against it at every legitimate point of attack. On the question of adoption the officers of the state were divided, though it is probable that a majority of them were in the party of the opposition.<sup>1</sup> There is little evidence that Clinton either by threats or promises made use of his official patronage to strengthen the power of his party.<sup>2</sup>

The ultimate victory of the adoptionists in the convention withdrew from Clinton a substantial number of mild supporters. From this time on, his firm hold upon the people of the state began to weaken. Hamilton immediately laid plans to prevent the governor's re-election in the spring of 1789, and although his shrewdly chosen candidate of compromise, Judge Robert Yates,<sup>3</sup> was defeated, the result of the election was generally favorable to the Hamiltonian party.

The cleavage of parties in New York over the question of adoption and their temporary organization under the leadership of Clinton and Hamilton did not in any sense disappear after the decision of that issue. Politics in New York have from the beginning been intensely personal. Men, more largely than principles, have been the determining factor in party formation and party development. And

<sup>1</sup> Elliot, *Debates*, ii, 221.

<sup>2</sup> Mr. Fish says that in the state convention of 1788 the charge was definitely made against Clinton that he was using his patronage to defeat the constitution. In the opening speech of the convention Chancellor Livingston exhorted the officers of the government to forget the pride of office and to have no interest as magistrates in advancing the power of the state at the expense of the union, and he was answered somewhat acrimoniously by Mr. Lansing (Elliot, *Debates*, ii, 216, 220, 221). Livingston's imputation, however, was only that the officers of the state might be influenced by private prejudices born of self interest, and there is certainly nothing in his remarks which could be even remotely construed into a "definite charge" against Clinton's use of patronage. C. R. Fish, *The Civil Service and the Patronage*, 5, 6.

<sup>3</sup> Hamilton, *Works*, (Lodge ed.), i, 516.

so it was that the rise of federalist and republican parties in the nation upon the broad issue of constitutional interpretation found in New York tolerably well organized parties, the integrity of which had been maintained during the few years' interim since 1789 largely, if not entirely, upon the basis of personal allegiance.

Clinton realized that the day of his undisputed political ascendancy had passed. The call in the election of 1789 was close.<sup>1</sup> The combination party organized by Hamilton had leaped full grown into the contest and each year that passed saw it mature in influence and power. There was never a time when the governor needed to exercise greater care in the distribution of his patronage. Yet he seems to have exhibited singular forbearance toward his opponents. In the election of 1789 Aaron Burr had thrown his influence against Clinton,<sup>2</sup> but before the year was out Clinton had appointed him attorney general in the place of Richard Varick, resigned.<sup>3</sup> In this, however, the governor may have been moved by much more than the liberality of disinterest, for Burr<sup>4</sup> was the leader of the coterie of young men whose influence was not to be safely overlooked. In 1790 Robert Yates, his opponent of the year before for the office of governor, was upon Clinton's nomination raised to the office of chief justice.<sup>5</sup> A year later, the assembly having passed an act creating several new counties,<sup>6</sup> it devolved upon the

<sup>1</sup> Clinton, 6, 391; Yates, 5, 962; *Civil List*, State of New York, 1888, 166.

<sup>2</sup> (Cheetham), *A View of the Political Conduct of Aaron Burr*, 10, 13.

<sup>3</sup> MS. *Minutes of the Council of Appointment*, ii, 185, 186.

<sup>4</sup> Two years later, 1791, Burr was elected to the United States Senate and in 1792 was nominated by Clinton for a seat upon the supreme bench of New York, a position which he declined.

<sup>5</sup> MS. *Minutes of the Council of Appointment*, ii, 224.

<sup>6</sup> *Assembly Journal*, xiv, 57, 101.

governor to nominate for them an entirely new list of officers. He appears to have made his nominations with little consideration of the political tenets of the nominees. The list includes the names of many federalists.<sup>1</sup>

So rapid had been the growth of the federalist party that the April elections of 1793 showed a substantial majority for that party both in the assembly and in the senate.<sup>2</sup> The close contest between Jay and Clinton had been fought out the year preceding with much bitterness of feeling, and vituperative accusations had followed the refusal of the canvassers, upon a technical irregularity, to count the votes cast in Otsego, Clinton and Tioga counties.<sup>3</sup> The line of party division had in consequence been more clearly drawn and the result showed a loss to the republicans. It was at this time when the state legislature was at political cross purposes with its chief executive that the inefficiency of the constitutional method of appointment became unmistakably evident.

In 1793 the question of creating a fifth seat upon the bench of the supreme court began to be agitated. Since 1790 the federalist party had set their hearts upon securing a seat upon the bench for Egbert Benson,<sup>4</sup> but they realized that there was small likelihood of their success with a council containing only one federalist. When, however, it became known that the governor and the three republican members of the council were not in harmony of opinion upon a candidate, they began to see that a bold stroke of somewhat questionable politics might, after all, accomplish the desired result. The republican candidate for the pro-

<sup>1</sup> Hammond, *History of Political Parties in New York*, i, 53; MS. *Minutes of the Council of Appointment*, ii, 231-234.

<sup>2</sup> *Assembly Journal*, xvii, 5.

<sup>3</sup> Deeds, xxiv, 249; Office of the Secretary of the State of New York.

<sup>4</sup> MS. *Minutes of the Council of Appointment*, ii, 224.

posed judgeship was Peter W. Yates, but it was said that Governor Clinton although unwilling to nominate Yates did not wish to make an open rupture with those of his party who favored him.<sup>1</sup> Clinton seems to have regarded it as his prerogative to determine in cases where the law was silent on the matter the number of officers necessary to the performance of the functions of government.<sup>2</sup> But on this occasion he cleverly raised the question of the necessity of appointing an additional judge by submitting the matter to the council. Of the four members of the council Frey was the only federalist. The division of opinion within the council is clearly shown by an entry in the minutes of October 22, 1793:

His Excellency the Governor having submitted to the consideration of the Council the propriety of proceeding to the Appointment of a Fifth Judge of the Supreme Court and different persons being nominated for that Office two of the Members to Wit, M<sup>r</sup>. Hasbrouck and M<sup>r</sup>. Frey expressed doubts respecting the necessity of such an Appointment at this time, and M<sup>r</sup>. Hasbrouck also suggested that if such an Appointment was necessary he had not been able to form a satisfactory Opinion as to the most suitable Character to fill that important Office, and those Gentlemen did therefore decline to vote for any person to fill that Office; and the other two members, to Wit, M<sup>r</sup>. Gelston and M<sup>r</sup>. Woodworth agreeing in their Votes as to the person to be appointed. thereupon, Resolved that the further consideration of this Subject be postponed until Monday next.<sup>3</sup>

The disagreement continued at the next meeting and further consideration of the matter was deferred to the first

<sup>1</sup> Hammond, *op. cit.*, i, 80.

<sup>2</sup> *Albany Gazette*, October 23, 1794.

<sup>3</sup> MS. *Minutes of the Council of Appointment*, iii, 65, 66.

week in January, 1794. If the governor in reality questioned the advisability of making the appointment, it will be observed that one republican councillor, Hasbrouck, sided with him, and the federalist member naturally preferred to sanction a policy of procrastination rather than see Benson's possibilities utterly destroyed.

The newly elected legislature with its strong federalist majority came together on the seventh of January, and the plan by which Benson was to be seated was at once disclosed. Scarcely had the oath of office been administered to the members and the necessary officers of the assembly elected when Josiah Ogden Hoffman, a member from New York, rose and in an impassioned speech violently attacked the governor and the council for their failure to appoint a fifth judge. He moved that the house "immediately proceed to nominate and appoint a Council of Appointment;"<sup>1</sup> and he "offered as reasons for the immediate appointment of the council, the necessity of losing no time in arresting the progress of the present council, before they should proceed to the appointment of a fifth judge; which, he remarked, common report had affirmed was to fall upon, in prejudice to the man who best deserved it, one who, however he might be *equal* in *abilities*, was not superior in *integrity*."<sup>2</sup> The existing council had not lived its one brief year. A grave question of constitutional interpretation was involved. The reasonable intent of the constitution was obviously that any given council should exist for one year.<sup>3</sup> The motion before the house had no shadow of precedent in which to hide itself. An effort was made to prevent the accusation of indecent expedition.<sup>4</sup> But postponement "was opposed by Mr. Hoffman, who remarked that the mischief of ap-

<sup>1</sup> *Assembly Journal*, xvii, 4.

<sup>2</sup> *Albany Gazette*, January 9, 1794.

<sup>3</sup> Article xxiii.

<sup>4</sup> *Assembly Journal*, xvii, 4, 5.

pointing an improper person to the office of 5th judge, might be done that very night.”<sup>1</sup> The federalists had come prepared to strike boldly and they would brook no delay in coming into their own. With a fine scorn alike for the quibbles of constitutional law, the authority of precedent and the propriety of slow deliberation, they overwhelmed their opponents and a new council consisting of three federalists and one republican was chosen on the first day of the session.

The governor and the existing council, when they saw the open hand of the assembly, had it easily in their power to frustrate the purpose underlying this unprecedented proceeding. There was no moral or legal authority over them to prevent their appointing Yates or any other republican they chose to the office sought for Benson, even while the house was in the very act of choosing their successors. There is no evidence, however, that such a proposal was advanced. Governor Clinton, in possessing what he believed to be an exclusive right of nomination, probably felt reasonably safe against being entirely overridden.

The new council, however, were no mean servants of those who had called them into this untimely existence. They were certainly not to be outdone by the assembly in the matter of acting without supersensitive scruples upon the finer technicalities of constitutional law. The wording of the constitution upon the question of the right of nomination was not explicit, whatever may have been its previous interpretation and the intention of its framers; and they took due advantage of the doubtful clause. Benson was nominated by a member of the council and was elected over the protest of the governor by the vote of the three federalist members.<sup>2</sup> As a result the governor was degraded to

<sup>1</sup> *Albany Gazette*, January 9, 1794.

<sup>2</sup> MS. *Minutes of the Council of Appointment*, iii, 68.

the level of any other councillor, with the sole difference that his term was for three years and was not subject to the will of the assembly; and the whole machinery of appointment was, theoretically at least, made subservient to the changeful political will of the legislative department of the government. One check still remained in the discretion of the governor, but it was drastic in its effects. He still possessed the power to adjourn the council and he might easily have declined to reconvene them, with the result that such vacancies as existed would have remained unprovided for. But he was not willing to apply such heroic treatment to the situation. As the presiding officer of the council he himself must have put the question on the nomination of Benson by one of the councillors, although the minutes do not bear record of the fact.

The election of Benson to the newly created judicial office was the first of a series of acts by which a wholly new method of making appointments was temporarily instituted in New York. The federalist council took the power of the patronage largely out of the hands of the governor and proceeded to distribute offices with little regard for his wishes. Governor Clinton was at first content with remonstrating against the actions of the council<sup>1</sup> and in refusing to affix his name to the minutes.<sup>2</sup> But in March, 1794, he delivered to the clerk of the council to be filed among its papers a formal protest against the majority of the council.<sup>3</sup> "As I conceive it my duty," he wrote, "to bear testimony in the most explicit and unreserved manner against every departure from constitutional principles, I now deliver in writing my reasons for dissenting from the

<sup>1</sup> *Albany Gazette*, October 23, 1794.

<sup>2</sup> MS. *Minutes of the Council of Appointment*, iii, 68, 76, 78, 80, 81, 84, 85, 87, 89, 96, 105, 145, etc.

<sup>3</sup> This paper is not found among the files of the council.

measures pursued by the council." Not only had they claimed and exercised a right of nomination concurrent with the governor, but they had made many other encroachments upon what he regarded as the prerogatives of the governor. In cases where the number of officers was not definitely prescribed by law they had claimed the right of determining this question, while the governor contended that since he alone was responsible for the administration of the laws the question as to how many officers were needed for effectual administration belonged solely to him. He also objected to the council's resisting without assigned cause the reappointment of officers whose commissions could by law be made out only annually. He complained that the council had acted arbitrarily and without sound discretion in "displacing" such officers, and he pointed out that where political parties exist this policy could result only in depriving men of office because they had "too much independence of spirit to support measures they suppose injurious to the community," and in inducing others "from an undue attachment to office to sacrifice their integrity to improper considerations."<sup>1</sup> Governor Clinton caused this protest to be made public in the fall of 1794 and the federalist members of the council immediately replied to it in a long review of the whole situation.<sup>2</sup> They defended their actions and made every effort to exhibit a glaring inconsistency between the spirit of Clinton's protest and the record of his own policy of patronage. Their effort was weak. They admitted that they had "increased the number of officers in instances where the number is not ascertained by law" and that they had "displaced officers with-

<sup>1</sup> Printed in the *Albany Gazette*, October 23, 1794.

<sup>2</sup> Original in Civil Files of the Council of Appointment, October 3, 1794, signed, Ph: Schuyler, Selah Strong, Zina Hancock. Reprinted in the *Albany Gazette*, October 23, 1794.



out an hearing, or without assigning a cause." And in their effort to ground their action upon precedent they ransacked the minutes of the council and drew forth a single instance during the period of the revolution in which an officer was removed after having refused to appear and defend himself against the charges made against him. They absurdly contended also that whenever a promotion either civil or military was made other than in accordance with seniority and rank a whole list of displacements was virtually recorded, and instances were cited to show that this had been done. Upon the fact, already observed, that the governor submitted to the council the question of the propriety of appointing a fifth judge they concluded that the governor admitted the right of the council to determine the number of officers where the law was silent on the point. A few other isolated instances were cited in which the names of justices who had served for the constitutional term of three years did not reappear when the triennial commissions were issued, although other reasons than executive removal might easily have accounted for these few cases. Nothing could have better served to show the uniform justice and moderation in George Clinton's use of the power of patronage than the very fact that three of his bitterest political opponents were unable even under urgent incitement to muster in their indictment anything beyond a single civil case in which a somewhat aggressively violent federalist had at the expiration of his commission been superseded by a republican without any charge of inefficiency having been filed against him.<sup>1</sup>

<sup>1</sup>The case of Benjamin Gilbert, sheriff of Otsego county, who had played an important rôle in that county in connection with the Jay-Clinton contest of 1792; Hammond, *op. cit.*, i, 85; MS. *Minutes of the Council of Appointment*, ii, 293, 350. Gilbert was restored to office by the federalist council; *ibid.*, iii, 79.

It is to be noted that this unmanageable council did not attempt to make many actual removals from office. They seem to have been content with resisting the reappointment of their political opponents at the expiration of their legal terms of office. Reappointment to office where no sustained accusation of inefficiency was raised had, however, become so strong a precedent that the failure to reappoint was looked upon as a removal. In some cases the action of the council was resented by the republicans whose commissions were not reissued. In one instance the members of the legislature took the matter up with the council in behalf of their constituents. Adam Comstock and others wrote to the council:

We the subscribers Representatives of the People of the County of Saratoga, being deeply impressed with the unprecedented proceedings of the last Council of Appointment relative to the magistracy in the County we have the honor to represent; a great number of whom have been indiscriminately degraded from their office without the least pretence of Complaint against them; and who have served their County in the Character and Station of Magistrates with Honour & Ability, and to the great and general satisfaction of the people—Have tho't it our duty then early and respectfully to address you on the subject, and Request the Hon<sup>le</sup> the Council will take the case into consideration and to reappoint all such, so many of those who have been omitted in the last General Commission who have done honour to their appointment.

We beg further to observe that Adam Comstock having been omitted in the General commission does not wish to be reappointed.<sup>1</sup>

The only notorious act of removal recorded against the

<sup>1</sup> Adam Comstock and others to the council, February 4, 1795; *Civil Files of the Council of Appointment*.

council was that of Thomas Moffat, clerk of Orange county. This office was held at the pleasure of the council. A supersedeas was accordingly issued withdrawing his commission, and substituting in his place Reuben Hopkins, one of the members of the council.<sup>1</sup> No complaint of misconduct was filed against Moffat, and his removal marks the first clear expression of the spoils system in New York.

The holders of office under the government soon began to feel genuine anxiety concerning the certainty of their tenure. Richard Varick, mayor of New York, wrote to Governor Clinton in March, 1794 :

Your New Council of Appointment puts me in mind of the Description of Death; It says to all *Inns, be ye also ready.*

I have only one uniform Answer on all such Occasions, which is that if "*a conscientious and attentative Discharge of my public Duties is not sufficient,* but if I must Dance to the Humours of the Day, I had better move in a more humble walk & I shall be ready to take leave of public office."<sup>2</sup>

The policy which George Clinton pursued in the distribution of the patronage in New York during the early history of the state government was in many respects similar to that which Washington adopted in the national government. The most striking feature of the policy of both was its liberality. Neither of them had been preceded in office, and in consequence the question of removal or retention of former office-holders did not arise. Both of them made the larger number of their appointments before the rise of organized political parties. On the question of the adoption of the constitution they were themselves on opposite

<sup>1</sup> MS. *Minutes of the Council of Appointment*, March 27, 1794, iii, 103.

<sup>2</sup> George Clinton, *Public Papers*, xxiii, 6235.

sides, yet neither of them appears to have considered to any appreciable extent the attitude which their appointees assumed upon this issue. As political parties began to develop Washington showed only slight evidences of a disposition to consider the political views of candidates, while George Clinton in numerous instances appointed to office those who were politically antagonistic to him. Both of them retired before the necessity for a direct expression of policy upon the subject of political appointments had become pressing. And we shall see that some years later when George Clinton was restored to power he still resisted the establishment of a general system of spoils. On the whole it seems that during the first period of the history of the patronage a standard of justice, purity and freedom from littleness was established which must be ascribed largely to the favorable conditions under which the early system of appointments was inaugurated. Certain it is that in the later period, which witnessed the development of the full power and influence of contending political parties, it would have been impossible to preserve unmodified the standard which had been set.

## CHAPTER II

### PATRONAGE UNDER THE FEDERALISTS

THE victory of the federalists at the polls in the spring of 1793 convinced George Clinton that the period of his political ascendancy in New York was drawing to a close. Ever since 1788 when Alexander Hamilton instituted the first vigorous opposition to his power he had been gradually losing his hold upon the people of the state. The change of the federal capital from New York to Philadelphia had removed from the contest much of Hamilton's personal influence, but the war of politics waged on. Distressed by illness and looking defeat in the face, Clinton determined not to become a candidate for re-election. In the spring of 1795 he issued an address to the freeholders of New York announcing his intention to withdraw from public life.

There was in neither party a pre-eminent candidate for the succession. Hamilton, although he had resigned from Washington's cabinet, refused to allow his name to be placed in nomination by the federalists,<sup>1</sup> and the party was unwilling to risk its success upon Philip Schuyler, who a few years before had been defeated by Aaron Burr in the legislative vote for United States Senator. Chief Justice Jay, who had been the candidate of the party at the preceding election, was abroad upon a very delicate mission, the satisfactory result of which could by no means be predicted. At a meeting held in Albany, however, the lead-

<sup>1</sup> Hamilton, *History of the Republic*, vi, 213.

ing men of the party finally determined to nominate him, although there was not sufficient time left to secure from London his consent to the nomination.<sup>1</sup> Three years before he had agreed to become a candidate and would in all probability have been elected had not the votes of three counties upon a technicality been declared invalid by a strictly party vote of the board of canvassers. It was felt that whatever motives had made him willing to surrender the office of Chief Justice of the United States for the governorship of New York in 1792 could be none the less potent in 1795.

In the republican ranks Colonel Burr did not enjoy the degree of confidence necessary to secure the nomination, and others were unwilling to take it. After some debate the party at length selected Robert Yates, chief justice of the supreme court of New York. Yates, it will be recalled, had been Hamilton's candidate against Clinton in 1789, but he was still counted a republican. The fact that a man could in so short a period as six years become successively the candidate of two opposing factions without being dubbed an apostate serves to show that parties at the time of the adoption of the constitution had not become rigidly organized, if, indeed, they can be said to have existed at all. Yates's inordinate ambition for office made him callous to the prospect of defeat from which other prominent republicans recoiled. The very choice of him was eloquent of the weakness of the party. The chief justice of New York was not the man to rally the depleted forces of the republicans in this contest with the Chief Justice of the nation, and two days before Jay landed in New York he was elected by a large majority. He promptly resigned his exalted judicial position.

In his first message to the legislature Governor Jay took

<sup>1</sup> Jay, *Life of John Jay*, i, 355.

up the question of the governor's constitutional share in the making of appointments. He pointed out that it had not yet been definitely settled whether a just construction of the constitution assigned to the governor the exclusive right of nomination. "Circumstanced as I am," he said, "in relation to this question, I think it proper merely to state it, and to submit to your consideration the expediency of determining it by a declaratory act."<sup>1</sup> The legislature was in an embarrassing situation. It was well known that Jay, who had himself drafted the article in question eighteen years before, believed that the power to make nominations belonged exclusively to the governor. The question was no longer of practical importance now that the governor and council were once more of the same political creed. The federalist legislature was entirely willing to have a federalist governor make all nominations to a federalist council. To pass an act, however, declaring this right to lie exclusively in the governor would be too shameless a confession of unscrupulousness in the attitude which they had assumed the year previous. The select committee of the assembly, therefore, to whom this part of Jay's speech was referred, reported "that a declaratory act defining the powers of the Council of Appointment or prescribing the manner in which they shall be exercised in the opinion of the committee would be inexpedient," and two days later the house passed a resolution adopting the report of the committee.<sup>2</sup> This put an end to Jay's efforts

<sup>1</sup> *New York Governors' Messages*, i, 48, 49.

<sup>2</sup> *Assembly Journal*, xix, 48, 53. Mr. John C. Hamilton says (*History of the Republic*, vi, 341, 342) that at this point Alexander Hamilton was appealed to for a true construction of the article, and that he took the view recently acted upon by the federalist council appointed under Governor Clinton. This seems to have been Hamilton's construction of the article before the controversy had arisen (*Federalist*, Ford ed., 514), but it does not appear that he took any active part in the discussion which arose in 1795.

to secure a legislative settlement of the troublesome question. It is doubtful at best whether the legislature was legally competent to interpret this clause of the constitution constructing the executive department; and it appears that no case of appointment in which nomination was made by a councillor was ever brought before the courts for adjudication.<sup>1</sup> In practice, however, Jay began to exercise without question the exclusive right of nomination.<sup>2</sup>

When John Jay became governor of New York the result of his mission to England was not known. It is, to say the least, extremely problematical whether he could have carried the election even against Yates had the text of the treaty that he had negotiated been made public before the vote was taken at the polls. The violent storm of disapprobation with which the treaty was received had its center in New York. Jay was reviled and villified in terms of the most extravagant abuse. He conducted himself throughout this harassing period with a calmness and dignity which testified to his consciousness of duty fully performed. But the situation created by his foreign negotiations did not serve to smooth his executive pathway. Although the opposition to the treaty was led by the republicans, the federalists were very far from yielding it a mild-tempered approval. Under such circumstances a man of less probity of purpose would have felt justified in doing everything possible to demonstrate his loyalty to the party which had placed him in office, and to weaken the party which was heaping so much obloquy upon him. In the complete control of the state patronage which now passed over to him, Jay had it in his power, "with the advice and consent" of his federalist council to accomplish this double purpose of punishing his political opponents and reinstating

<sup>1</sup> Lincoln, *Constitutional History of New York*, i, 605, 606.

<sup>2</sup> *Assembly Journal*, xxiv, 123.



himself in the hearts of the estranged element of his own party.

Yet in spite of the political turbulence with which Jay's administration was ushered in, an examination of the files of the council fails to reveal any party feeling reflected in the applications for office which were presented to the governor and the council. These applications do not differ essentially in tone from those which were sent in during the administration of George Clinton. The old form of a petition signed by friends in the locality in which the office was situated was for the most part preserved. It is true that during the latter part of Clinton's term he had been often ignored in the applications of federalist candidates. Many of them were addressed either to the council alone or to one of its members. The drafters of one petition, indeed, had been so lacking in delicacy and good manners as to draw a line through the word "Governor," after having written, "to the Governor and the Council."<sup>1</sup> Upon Jay's accession to the chair applications began once more to be addressed to the governor and council. Not many of them urge political considerations openly in support of their claims. In the case of small men not likely to be known by the governor or any member of the council, reliance was placed either in the good federalist names appended to the petition or upon the information which could be had from members of the assembly and senate. Occasionally, however, the politics of the candidate is freely put forward. Nathaniel Delevan, in a long letter defending the character of one Joseph Pray who applied to be appointed a justice of the peace in Dutchess County, says:

Some persons I am informed have recommended John Akin,

<sup>1</sup> A petition from Broadalbin, Montgomery county, praying the appointment of Thomas Bourne as a justice of the peace; Feb. 14, 1795; *Civil Files of the Council of Appointment*.

John Taffy, Job Crawford and Daniel Davis—Mr. Davis I believe to be very capable of the Office, & notwithstanding his political principles I am persuaded the Federal characters would acquiesce in his appointment—I believe him to be more capable than either of the other three candidates—On the whole, to compromise the business, the better way I believe will be to appoint both Mr. Davis and Mr. Pray and then each party will be satisfied.<sup>1</sup>

It is worthy of note that both applicants were appointed.<sup>2</sup>

Again in a petition recommending Thomas Bourne for a similar appointment in Montgomery County the politics of the candidate is urged. The petition humbly prayed “his Excellency and the Honorable the Council” to appoint “the said Thomas Bourne to the office of one of our Justices of the peace as our Town is large and extends a great way in length and as we your petitioners can recommend him to be a good Federal Republican and a man of good moral character.”<sup>3</sup> Bourne had been similarly recommended to the federal council under George Clinton, the petition stating that the reason he had not been nominated to the council at the time that the town was set off was “as it was supposed by reason of his supporting the Federal Candidates at the ensuing Election.”<sup>4</sup>

When Jay entered upon his office he naturally found a large majority of the state offices filled with republicans. Some federalists, as we have seen, had been appointed by Clinton, and many of his earlier appointees had upon the rise of political parties become opposed to him in politics;<sup>5</sup>

<sup>1</sup> November 26, 1795; *Civil Files of the Council of Appointment*.

<sup>2</sup> MS. *Minutes of the Council of Appointment*, iii, 156.

<sup>3</sup> November 5, 1795; *Civil Files of the Council of Appointment*.

<sup>4</sup> February 14, 1795; *ibid.*

<sup>5</sup> It will be observed later on that many of those removed from office by the republicans in 1801 were originally appointed by Clinton.

while the federalist councils which had existed during the last eighteen months of his administration had succeeded in installing those of their own party in the place of not a few republicans.<sup>1</sup> Yet the bulk of the patronage was being enjoyed by the followers of Clinton.

It does not appear that any pressure was brought to bear upon Governor Jay to induce him to oust the republican office-holders in favor of the victorious federalists. Certain it is that a party which had resorted to the measures it had employed to gain control of the patronage before the expiration of Clinton's term of office would scarcely have placed a barrier in the pathway of its realization had the governor been disposed to inaugurate a thoroughgoing system of spoils. But Jay was not the man to bow before the demands of party unless those demands were in harmony with his own stern code of justice and equity. In his first speech to the legislature he had said: "To regard my fellow citizens with an equal eye; to cherish and advance merit, wherever found; . . . and in general, to exercise the powers vested in me, with energy, impartiality and prudence, are obligations of which I perceive and acknowledge the full force."<sup>2</sup> He did not intend to say that men would be appointed to office without regard to their political tenets. Jay was too vigorous a partisan for that. He had great faith in the intrinsic soundness of his own political views and a firm belief in the necessity of putting the reins of government in the hands of those whose politics were as sound as his own. His general policy, therefore, was to fill up vacancies as they occurred with men chosen from the ranks of his own party. Nor was that so slow a process as might be supposed.

<sup>1</sup> *Albany Gazette*, October 23, 1794.

<sup>2</sup> *New York Governors' Messages*, i, 47.

By the terms of the constitution of New York, the chancellor, the judges of the supreme court, the first judge of the county court were placed beyond the removing power of the governor or the council.<sup>1</sup> The higher judicial officers, therefore, were given all the independence necessary for the proper performance of their duties. The inferior offices of the judiciary were, however, made directly subject to the changeful will of the appointing power. It was expressly provided "That new commissions shall be issued to judges of the county courts (other than to the first judge) and to justices of the peace, once at least in every three years."<sup>2</sup> Sheriffs and coroners had to be appointed annually and the former were not permitted to serve more than four successive years.<sup>3</sup> A number of petty appointments were left for local distribution, and the final provision covering all other offices was "That where, by this convention, the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment."<sup>4</sup> Mayors and recorders of cities were also subject to annual appointment. It is obvious, therefore, that most of the minor officials were forced to make frequent applications for the renewal of their commissions. This of course meant that changes were often made at the expiration of a commission which would not have occurred had a positive act of removal been necessary.

Jay did not by any means substitute federalist officers at the expiration of every republican commission. This would have amounted almost to a general proscription so frequently did these commissions call for renewal. To these

<sup>1</sup> Article xxiv, Poore, *Charters and Constitutions*, ii, 1336.

<sup>2</sup> Article xxviii, *ibid.*, ii, 1337.

<sup>3</sup> Article xxvi, *ibid.*, ii, 1336.

<sup>4</sup> Article xxviii, *ibid.*, ii, 1337.

inferior offices, however, many federalist appointments must have been made in just this manner. The minutes show in the general county commissions made out under Jay substantial differences in personnel from those issued by Clinton.<sup>1</sup> These commissions were for judges, assistant judges and justices and were in accordance with the constitution of necessity made out at least every three years. Of course it is only in rare instances that the politics of those whose names were dropped in making out the new lists can now be ascertained. It is presumable that many were republicans. What with resignations, change of residence, promotions and deaths among the holders of offices subject entirely to the pleasure of the appointing power, and what with the necessity for a frequent renewal of the limited commissions, the influx of federalists into office was by no means insignificant. Jay and the federalists were in power six years; when their downfall was accomplished the republicans in New York found almost every position of consequence occupied by a federalist. Indeed it appears that many of those appointed by George Clinton and retained during the federalist régime were regarded as federalists.

In addition to the changes of officers which were made at the expiration of commissions there are also evidences that actual removals were in some instances made. Judge William Jay, in his biography of his father, makes the broad statement that "not one individual was dismissed by him from office on account of his politics." The spirit of this statement is perhaps justified by the fact that no notorious instance of political ostracism is recorded against

<sup>1</sup> MS. *Minutes of the Council of Appointment*; as in Queens where five names are dropped and three new names appear; compare ii, 332, iii, 62, 87, with iii, 196; or King's, five changes in a list of twenty-four; compare ii, 345, iii, 6, with iii, 197; compare also ii, 339, iii, 64, 81, 107, 113, with iii, 198, 199.

him, and by the additional fact that dismissal did not by the construction of the councillors' power necessarily originate with the governor.<sup>1</sup> As a literal statement, however, it is far from accurate. The facts are of course more or less elusive, but it seems well assured that a considerable number of lesser officials paid the price of their opposition with their positions. Certain it is that when the republicans were restored to power in 1801, a number of letters from deposed officers seeking reinstatement assert that they were removed during the administration of Governor Jay on account of their politics. Alexander Zuntz, asking to be reappointed as auctioneer, assigns as one of his claims to consideration "that the late Governor Jay made the very Expression that his reason of removing my Com<sup>rs</sup> on Acc<sup>t</sup> of being a Republican, my authority I have of this by Ez[ekiel] Robins Esq<sup>r</sup>." <sup>2</sup> Philip Pell, writing to Governor Clinton in 1801, states that twelve years previous he was appointed surrogate of Westchester county and "continued until some time in October last, when," he goes on, "I was superseded by the then Governor and Council of appointment. Why this removal from office I know not, unless to gratify the desire of Samuel Youngs who probably was a favorite." <sup>3</sup> His statement is borne out by the fact that the minutes bear no record of the cause of his removal.<sup>4</sup> Again:

The petition of Ephraim Hoit of the City of New York, broker,

Respectfully Sheweth

That during the administration of his Excellency Governor Clinton he was appointed one of the Auctioneers of the said

<sup>1</sup> *Assembly Journal*, xxiv, 201.

<sup>2</sup> July 6, 1801; *Civil Files of the Council of Appointment*.

<sup>3</sup> July 7, 1801; *ibid*.

<sup>4</sup> MS. *Minutes of the Council*, iv, 277.

city and continued such until the administration of his Excellency Governor Jay, when he was superseded without any reason being assigned.

That he trusts few persons have been better recommended than your petitioner, and he begs leave to refer the Council to the recommendation now on file among the papers of the Council of appointment.

Your petitioner therefore hopes, that as no cause whatever was assigned for displacing him, he may with propriety solicit of your honorable body a reappointment, which hereby he most respectfully does: And as in duty bound he will ever pray &c.<sup>1</sup>

The minutes of the council also yield some light upon the question of removals during Jay's term of office. It was the custom in the council in case of a removal for misconduct in office for the accusation to be entered on the minutes and for the accused to be notified that the council was ready to hear his defense. If the accusation was sustained and removal followed, an entry was then made stating the cause of the removal. Mr. Hammond, the historian of New York politics, points out two instances of removal under Jay in which no cause was entered. One was the case of John Jacob Lansing, removed from the office of sheriff of New York in December, 1798, and the other was that of Jedediah Peck who was removed from the office of judge of Otsego county in March, 1799.<sup>2</sup> The latter was clearly a case of political removal. A careful examination of the minutes, however, reveals that in numerous other instances a supersedeas was issued without any record of misconduct being entered, although the custom of entering the cause for

<sup>1</sup> July 3, 1801; *Civil Files of the Council of Appointment*. See also letters of Samuel Page, July 4, 1801, and of James Lowerre, July 8, 1801.

<sup>2</sup> *Albany Register*, August 25, 1801.

removal was in most cases followed. In March, 1796 Hezekiah Holdridge was removed from the office of justice of the peace in Columbia county without assigned cause.<sup>1</sup> In August, 1798 Asa Danforth was deprived without apparent cause of the judgeship of the court of common pleas in Onondaga as well as of his lieutenant-colonelcy in the militia.<sup>2</sup> After March, 1799, James Provoost was no longer allowed to inspect lumber for the county of Albany although no misconduct appears against him.<sup>3</sup> Many other instances might be pointed out.<sup>4</sup> If all the removals from office during Jay's administration in which no entry of the cause was made are to be regarded as removals for political reasons, the evidence is tolerably conclusive that the policy was adopted at least to an appreciable extent. It must be remembered, however, that the minutes kept by the council were very meager, and something, it may be, can be laid to the delinquency of the recording secretary. But whether or not every one of these removals was for the offense of politics it is likely that some of them were. It is coloring the facts of history, therefore, to state that the policy of removal was wholly foreign to the administration of the federalists in New York.

The policy which Jay pursued in the distribution of the patronage in New York is of supreme interest chiefly because his election to the governorship of the state marked the first change of party supremacy. He was creating precedent at first hand, for neither in New York nor in national politics had there ever been presented the situation of a new administration whose political principles differed from those of its predecessor. Displacements in office for

<sup>1</sup> MS. *Minutes of the Council*, iii, 205.

<sup>2</sup> *Ibid.*, iv, 85.

<sup>3</sup> *Ibid.*, iv, 145.

<sup>4</sup> *Ibid.*, iv, 56, 82, 93, 136, 170, 175, 176, 203, 248, 271, 277.



reasons of politics were begun with no little vigor by the federalist councils under Clinton, and while, as has been pointed out, a similar policy was pursued by Governor Jay at least to some extent, yet nothing which could be termed a general system of removals was adopted.

When we turn from the consideration of local conditions to those which obtained in national politics at the same time we find one striking difference which bears an important and obvious relation to the problem of the civil service. When John Adams succeeded to the presidency in 1797 there was no change of politics in the administration. Adams was, indeed, the first president elected by a party upon fairly well defined issues, but Washington, although nothing of a partisan, was nevertheless a federalist in his beliefs. His appointees had been chosen with great care and deliberation, and once in office they naturally inclined to the creed of the administration. It is probable, therefore, that Adams did not find many of them inimical to the policies of the administration, and the question of removals did not in any large sense arise.

It is difficult to ascertain what general principles guided Mr. Adams in the making of appointments. He has left us in writing no such clearly outlined policy as Washington's letters exhibit. And yet there were reasons for this. The whole number of officers was not great, and most of them were acceptably filled. The fact that Mr. Adams received without question the bequest of a ready-made cabinet would seem to indicate that the idea of making promiscuous changes among those in office never occurred to him. Considering, therefore, that his appointments were narrowed to the filling of chance vacancies and occasional offices of new creation, there was little need for his formulating an elaborate policy. Moreover, it is probably true that Adams left to his cabinet members the appointment of many more offi-

cers than did Washington.<sup>1</sup> Owing to these facts the number of applications for executive favor was much smaller than it had been during the administrations of Washington;<sup>2</sup> and the distribution of the patronage did not become one of the serious executive problems of Adams's term of office. Since the question was distinctly one of minor consideration during an administration that was in some other political aspects one of the most turbulent in our history, it is scarcely a matter for wonder that it is only by patching together a fragment here and an isolated instance there that we are able to arrive at anything that might be called a policy or system of appointment.

It seems reasonably certain that in his civil appointments, at least, Adams adopted a careful policy of exclusion toward all republican candidates. No instance has been pointed out of his having appointed to office a man politically opposed to the party that had placed him in office, although he received applications from republicans as well as federalists.<sup>3</sup> Whether Adams acted in this from the personal conviction that upon the party in power lay the duty of strengthening its hold by a jealous distribution of patronage or whether he was strongly influenced by the fear of senatorial rejection seems open to question. The senate was not prepared to exhibit the same deference to his nominees which they had, with one exception, accorded those of Washington, and Adams did not fail to realize this. His second nomination, that of his son John Quincy Adams to be minister

<sup>1</sup> *American Historical Review*, ii, 242.

<sup>2</sup> *Ibid.*, ii, 241. Mr. Galliard Hunt points out this fact in the valuable study he has made of the applications for office received during Adams's administration, based upon the papers on file in the archives of the Department of State.

<sup>3</sup> *Ibid.*, ii, 243.

plenipotentiary to the king of Prussia, was at first rejected,<sup>1</sup> and was finally approved only after having been the subject of debate at three executive sessions.<sup>2</sup> He seems to have said very little in regard to this matter while he was in office, but some years later he writes: "The president has not influence enough, and is not independent enough. Parties will not allow him to act for himself. For twelve years one party prevailed, and that party would not allow their presidents to be impartial."<sup>3</sup> And again:

The President has, or ought to have, the whole nation before him, and he ought to select the men best qualified and most meritorious for offices at his own responsibility, without being shackled by any check by law, constitution, or institution. Without this unrestrained liberty, he is not a check upon the legislative power nor either branch of it. Indeed he must be the slave of the party that brought him in. He never can be independent or impartial.<sup>4</sup>

However great the influence of the senate may have been in calling out Mr. Adams's strictly partisan nominations, it is undeniably true that his proscription of the opposition, so far as it lay in his power, was pretty thoroughgoing. He confesses that he was more cautious in the matter of appointing "democrats and Jacobins of the deepest dye" than Washington had been; and while he denied in the same letter, written to Oliver Wolcott in 1800,<sup>5</sup> that he had ever laid down as a rule that "any man's political creed would be an insuper-

<sup>1</sup> May 20, 1797; *Executive Journal of the Senate*, i, 241.

<sup>2</sup> *Ibid.*, i, 240-242.    <sup>3</sup> Adams, *Life and Works of John Adams*, vi, 539.

<sup>4</sup> February 18, 1811; *ibid.*, ix, 634.

<sup>5</sup> *Ibid.*, ix, 87. Gibbs, *Administrations of Washington and John Adams*, ii, 431, 432.

able bar to promotion," yet his theoretical assertion of political generosity and independence falls far short of creating a liberal policy of patronage when it is placed over against the fact that his civil appointments were confined exclusively to federalists. "Political principles, and discretion, will always be considered," he went on in the letter to Wolcott, "with other qualifications, and well weighed, in all appointments." And this one sentence probably contains the essence of Adams's opinion on the subject. Political creed was of importance but other qualifications were not to be ignored. And there is no evidence that he was careless in the consideration of these "other qualifications." It was an era when almost every act of the administration was ascribed to sinister intent and every error, however honest, was eagerly ferreted out for malignant assault. Had he appointed unfit characters solely upon the basis of their political services the republican press would hardly have permitted the fact to be concealed. That they did not herald many errors in this regard is no trivial evidence that there were few to herald.

Adams's system of patronage was, however, attacked in two other regards. He was accused of nepotism,<sup>1</sup> and the few isolated cases of political removals which he made were held up to public scorn.<sup>2</sup> Neither of the accusations was without basis in fact. In regard to the former, Adams seems to have lacked that fine conscientiousness and that jealous regard for his own good repute which had prompted Washington to refuse under similar circumstances to nominate for office members of his own family.<sup>3</sup> In a letter to

<sup>1</sup> *Jefferson Papers*, Massachusetts Historical Collections, lxi, 91.

<sup>2</sup> Callender, *The Prospect Before Us*, 31, 32; Wood, *History of the Administration of John Adams*, 161, 162.

<sup>3</sup> Washington, *Writings* (Ford ed.), xi, 395, note.

Hamilton written in 1800 in regard to a change of command in the army for his son-in-law, he says:

I anticipate criticism in everything that relates to Colonel Smith; but criticism, now criticized so long, I regard no more than "Great George's birth-day song." Colonel Smith served through the war with high applause of his superiors. He has served, abroad in the diplomatic corps, at home as marshal and supervisor, and now as commandant of a brigade. These are services of his own, not mine. His claims are his own. I see no reason or justice in excluding him from all service, while his comrades are all ambassadors or generals, merely because he married my daughter.<sup>1</sup>

This seems to sum up Adams's independence of attitude toward the propriety or impropriety of his lending his official power of patronage to the advancement of his relatives. Colonel Smith had married his only daughter, and it was in his interest that Adams more than once laid himself open to severe criticism. Washington had early singled Smith out for preferment<sup>2</sup> and Adams saw no reason why he should be less alive to his son-in-law's deserts. In 1798 the imminence of war with France called for the organization of a provisional army of which Washington was appointed lieutenant general and commander-in-chief. Colonel Smith was mentioned by Washington as his choice for one of the three brigadier generals to be appointed. His name was also put down in a list of possible nominations for the office of adjutant general, but his name ranked third in a list of candidates only one of whom was to be placed in nomination.<sup>3</sup> Adams promptly nominated him "to be Adjutant General, with the rank of Brigadier General,"<sup>4</sup> and the

<sup>1</sup> Adams, *Life and Works of John Adams*, ix, 63.

<sup>2</sup> *Executive Journal of the Senate*, i, 32, 33, 81, 82.

<sup>3</sup> Washington, *Writings* (Ford ed.), xiv, 41, 42; Upham, (Pickering), *Life of Timothy Pickering*, iii, 464.

<sup>4</sup> *Executive Journal of the Senate*, i, 292.

senate, acting largely upon the advice of Secretary of War Pickering,<sup>1</sup> as promptly declined to agree to the nomination. The senate having ratified all the other military nominations made by the president at that time, Mr. Adams was estopped from nominating Smith to the brigadier generalship for which Washington had desired him, and the disappointed son-in-law was subsequently forced to accept a lieutenant colonelcy in a New York regiment.<sup>2</sup> When the army disbanded in 1800, and Smith found himself out of employment, he was again brought forward by Adams and nominated for the post of surveyor and inspector of revenue for the district of New York.<sup>3</sup> His previous business career was on this occasion the subject of somewhat rigid investigation by a senatorial committee, but after a few months' delay the nomination was at length confirmed.<sup>4</sup>

Nor were Adams's sins of "domestic consideration" confined to his advancement of Smith. The diplomatic elevation of his son brought down criticism upon his head, while the appointment of his wife's nephew, William Cranch, as an assistant judge of the District of Columbia was among the last acts of his administration.<sup>5</sup>

As to the other charge in the indictment against his system of patronage, the evidence, so far as it goes, is also

<sup>1</sup> Upham (Pickering), *op. cit.*, iii, 465, 466.

<sup>2</sup> *Executive Journal of the Senate*, i, 299, 303.

<sup>3</sup> *Ibid.*, i, 357.

<sup>4</sup> Upham (Pickering), *op. cit.*, iii, 468, 469; *Executive Journal of the Senate*, i, 384, 387. It is perhaps worthy of note that Mr. Adams did not in every instance yield to Smith's requests for his assistance. In 1799 he wrote him: "If you desire the command of Detroit, you must solicit it of the Secretary at War, the Commander-in-chief of the army, or Major-General Hamilton. I will not interfere with the discipline and order of the army because you are my son-in-law." Adams, *Life and Works of John Adams*, ix, 652.

<sup>5</sup> Nominated February 28, 1801; *Executive Journal of the Senate*, i, 387; Adams, *Life and Works of John Adams*, ix, 63, note.

clearly against him. Adams did make a few removals upon political grounds. But when the attempt is made to discover in Adams's policy substantial elements of a system of spoils beyond his rigid exclusion of the republicans from office, the evidence is much weakened by the isolation of the few cases recorded, by the violence of the removed offenders, and by the fact that charges were usually evoked. Callendar, indeed, asserted with his customary unbridled extravagance that Adams's system of persecution extended all over the continent. "Every person holding office," he went on, "must either quit it, or think and vote exactly with Mr. Adams. A catalogue of these expulsions would fill a pamphlet."<sup>1</sup> It is significant, however, that he mentions only two such expulsions, and Callendar was certainly not the man to hesitate rushing into print with multiplied instances, provided that instances were to be had.

The removal of Tench Coxe from his post in the treasury is perhaps the earliest case on record of dismissal from a position under the national government for political purposes solely.<sup>2</sup> Coxe was dismissed in December, 1797, from the position of commissioner of revenue to which he had been appointed by Washington five years before. It seems that the republican activities of Coxe proved unendurable to the administration, although the exact nature of his partisan offenses does not appear. He himself in his correspondence with Jefferson a few years later seeking reinstatement to office, ascribed it in general to his "course of firm and constant exertion" in behalf of the republican cause,<sup>3</sup> and he cited a number of minor incidents in which he had given ground for complaint. According to Gibbs's ac-

<sup>1</sup> Callendar, *op. cit.*, 32. Repeated in Wood, *op. cit.*, 162.

<sup>2</sup> Fish, *The Civil Service and the Patronage*, 19.

<sup>3</sup> *American Historical Review*, ii, 260, 261, letter to Jefferson quoted.

count,<sup>1</sup> the Secretary of State, Mr. Wolcott, had previous to his dismissal informed Coxe that the charge preferred against him was that of deliberate misconduct in office. George Cabot wrote to Wolcott, "I rejoice to hear that you have finally expelled a traitor from the treasury, who never deserved to be trusted."<sup>2</sup> And it seems to have been freely asserted by republicans without denial both in and out of Congress that Coxe had been turned out of office on account of his political opinions.<sup>3</sup> If an instance in a whole scheme of appointments can be said to establish a precedent, those who were responsible in later years for the introduction of a more drastic system of spoils in the national government found here an authority in practice to which they could ever point the finger of apology.

But this was not the only case of political removal by Adams. William Gardner, the commissioner of loans for New Hampshire and Joshua Whipple, the collector of customs for Portsmouth, were also deprived of office because they were too vehement in their opposition to the administration of the party in power. Whipple, it is true, was accused of making unjust exactions, but the chief ground upon which their removal was asked was neither dishonesty nor inefficiency, but their "extreme jacobinism" and their unalterable hostility to the government.<sup>4</sup> Years later Adams himself admitted the indiscretion of these removals. In an unpublished pamphlet written in 1808 and found among his papers, he wrote:

The power of removal was never abused in the first twelve years, except, perhaps, in two instances, and those removals

<sup>1</sup> *Administrations of Washington and Adams*, ii, 6.   <sup>2</sup> *Ibid.*, ii, 9.

<sup>3</sup> *Annals of 5th Congress*, 3d session, 2971; Adams, *Writings of Albert Gallatin*, i, 123.

<sup>4</sup> *American Historical Review*, ii, 254-256.



were made at the earnest and repeated solicitations of all the members of the house, and one of the members of the senate, from New Hampshire, much against the inclination of the president. Representations of misconduct in office were made to the president, and probably credited by those members of congress; but there is now reason to suspect, that they were dictated by too much of a party spirit.<sup>1</sup>

If Mr. Adams had added the case of Tench Coxe, he would perhaps have been justified in asserting that these were the only instances of the "abuse of the power of removal" during the supremacy of the federalist party. If a few other republicans were removed, causes other than their political views were perhaps with justice assigned. The number of removals for any cause was exceedingly small.<sup>2</sup>

The insignificant part which civil appointments played in Mr. Adams's administration is rendered even more striking by the comparatively large number of military appointments that were made. The threatened war with France and the consequent organization of the provisional army account for the disproportion. Questions of party did not enter into this larger class of appointments although the personal element is sometimes traceable in the history which covers them. In a letter to James McHenry, his secretary of war, written May 7, 1799, Adams clearly outlines the impartial attitude which he seems consistently to have followed. He writes:

Merit I consider, however, as the only scale of graduation in the army. Service and rank in the last war, or in any other war, are only to be taken into consideration as presumptive evidence of merit, and may at any time be set aside by con-

<sup>1</sup> Adams, *Life and Works of John Adams*, vi, 539.

<sup>2</sup> Mr. Fish states that there were only nineteen cases during Adams's administration; Fish, *The Civil Service and the Patronage*, 20, 21.

trary proof. Services and rank in civil life, and in time of peace, I think, ought not to be forgotten or neglected, for they are often of more utility and consequence to the public than military services.<sup>1</sup>

That he followed a course of similar independence of party in his diplomatic appointments is evidenced by the well known fact that he was deterred from sending Jefferson on the difficult mission to France only by reason of his holding the office of vice-president, that Madison was his second choice, and that Gerry was finally chosen much against the wishes of the Hamiltonian element of his cabinet.<sup>2</sup>

In summing up, the policy that the federalists adopted both nationally and locally in the distribution of the patronage which lay in their hands seems to have been essentially one of exclusion of the opposition. It is probable that they were actuated in this far more by a strong belief that the public welfare demanded it than by less laudable motives of personal interest or party aggrandizement. The exigencies of the new government called for the settling of its administrative and judicial offices upon men whose political tenets were in harmony with the policies of the party in power. Washington, it is true, stood upon a firm platform of an impartial judgment as between merits, but it must be remembered that in the hour when the question of appointments was most vital with him, nationally organized political parties scarcely existed. They were in process of formation during the period of his administration and emerged

<sup>1</sup> Adams, *Life and Works of John Adams*, viii, 640.

<sup>2</sup> For Adams's account see his Boston Patriot Letter, xiii; Adams, *Life and Works of John Adams*, ix, 284, 285. For Jefferson's account see his "Anas;" *Writings of Jefferson* (Ford ed.), i, 272, 273. See also Gibbs, *Administrations of Washington and John Adams*, i, 462 *et seq.*

with some organization only in the election of 1796. The fact that in 1795 he was unwilling to bring into his already distracted cabinet a member whose political views were opposed to the general course of his administration is at best a poor indication of his attitude upon the politics of his appointees, yet it seems reasonably well assured that in these later years it was scarcely his custom to fill offices with men notorious for the ardor of their opposition. It remained, however, for his successor in office to establish firmly this exclusive policy of the federalists. And what Adams accomplished for his party in the allotment of national offices Jay strengthened and fortified by pursuing a similar policy in New York. It is true that in the main he refrained from removing the Clintonians whom he found in office, but, as has been pointed out, his clemency in this regard is largely depreciated by the briefness of most of the terms of office in New York and the consequent opportunity for substitution at the expiration of a commission, without the necessity for a technical dismissal of the occupant. However pure and honest were the motives which prompted the federalists, and however mild the method adopted for securing their end, the important fact to notice is that republicans during the period of federal domination were rigidly excluded from office and the end of the century found federalists occupying almost the whole field of the government patronage.

But the federalists were playing a losing game. It called for more extended influence than this control of the patronage could confer, and it called for far greater tact and balance than Mr. Adams possessed to hold the party together during the critical years which preceded their fall from power. Cabinet intrigues and dissensions, the subtle complications of foreign influence, a shambling and uncertain policy in foreign affairs, the alien and sedition acts, Adams's estrangement from the real leaders of his party—these, as

a background for a more violent and abusive warfare of words than has ever in later times characterized factional politics in America, were amply sufficient to wreck the organization of the federalist party. The election of 1800 voiced the unfavorable judgment of the sovereign majority.

The final act of the outgoing federalists in regard to the patronage has received more attention at the hands of historians than all the other phases of their policy combined. The history of the judiciary act of February, 1801 and of Adams's appointments under it is too well known to require extended comment. If this act was, as the republicans asserted later, only a bold and unscrupulous stroke of the federalists in their dying hour to retain control of at least one department of the government, it was certainly the most reprehensible act attaching itself to an administration of the government not wholly above justifiable censure. The accusation was plausible. It came as a shock to every friend of the constitution who gave it credence, for so shameless a tampering with the conservative element of the constitution could not be looked upon without dismay. It is extremely doubtful, however, whether the depravity of the federalists was anything like as deeply laid as their opponents claimed. Mr. Adams had called the attention of congress to the indispensable necessity of revising and amending the judiciary system in his message to the sixth congress at the opening of the first session in December, 1799.<sup>1</sup> A bill was introduced in both houses in the spring of 1800 and the republican members took active part in the discussion of its provisions. After "a warm and lengthy debate," postponement to the second session of the congress was finally agreed upon.<sup>2</sup> This was certainly

<sup>1</sup> Annals of 6th Congress, 1st session, 188, 189.

<sup>2</sup> *Ibid.*, 107, 666.

some time before the republicans were confident of victory or the federalists seriously anticipating defeat in the ensuing elections. If the latter were scheming to secure the judicial department to themselves they were certainly taking time by the forelock. And the republicans were assuredly not making a very vigorous stand against the success of their scheme, for the debates, meagre though they are, show little or no opposition to the bill as a whole. In the argument against postponement it was even boldly stated, and apparently without challenge from the republicans, "that the close of the present Executive's authority was at hand, and, from his experience, he was more capable to choose suitable persons than another."<sup>1</sup> At the opening of the next session of congress, in November, 1800, Mr. Adams again recommended the judiciary system to their serious consideration, and a month later a bill similar to that before the house at the preceding session was reported from the committee to whom the subject had been referred. Again debate was had on its several provisions, but no unusual degree of acrimony was hurled into it, and the sincerity of its authors was not assailed.<sup>2</sup> The bill passed the house on the twentieth of January, the senate on the seventh of February, and on the thirteenth of February it became a law. The charge so furiously flung in the first session of the next congress,<sup>3</sup> and so often repeated in substance since, that the federalists, realizing that their overthrow was at hand, sought to entrench themselves in the judicial department of the government is scarcely borne out by the history of the origin and passage of the bill.

The propriety of Mr. Adams's hastily filling up the new

<sup>1</sup> Annals of 6th Congress, 1st session, 649.

<sup>2</sup> *Ibid.*, 878-880, 891-909, 912, 915.

<sup>3</sup> Annals of 7th Congress, 1st session, 581.

positions created by the bill—judges, attorneys, marshals—with staunch federalists from the number of his own immediate followers is, however, quite another question. Not only were the new judicial positions occupied but every administrative vacancy in sight was also supplied with a good federalist. In this unnecessary selection of officers to serve under his successor Adams was without doubt acting entirely within his prerogative, but it seems hardly open to question that he was exalting that prerogative at the expense of decency. There is little wonder that Jefferson was incensed. Even his most adverse critic justifies his dissatisfaction.<sup>1</sup>

This last act of the federalist administration served only to throw into unfortunate relief a civil service policy which, while it had been in a large measure free from littleness, had been nevertheless consistently exclusive toward the opposition. It set alive a spirit of grievance among the triumphant incomers and gave them justification for immediate attack. The same motives which had prompted the federalists to confine their appointments to the only party which had ever enjoyed the power of government could not fail to urge the republicans to make room for men of their own political calling. The natural corollary of federalist exclusion was republican removal.

<sup>1</sup> Hamilton, *History of the Republic*, vii, 563. With Hamilton, however, as between these enemies of his father, it was probably a case of not hating Jefferson less but Adams more.

## CHAPTER III

### THE CLINTON-JAY CONTROVERSY

THE election of 1800 gave the republican party its first opportunity to cross from theory into practice. Perhaps no period in the history of our politics is more interesting than this first change of parties. It was epochal in more than one respect, but chiefly in that it first blazed the road with precedent for future party changes. There were many difficulties to be overcome and many problems to be met and solved in this application of untried party principles—here a theory of constitutional interpretation—to the issues inherited from those of a different school. Striking as were the innovations wrought in those principles by their application to questions of practical politics, they are beyond the scope of our immediate inquiry. It is with the first problem of the triumphant party that we are concerned. The voice of the nation had placed the elective offices in their hands; was the whole number of appointive offices fully occupied by the party of the opposition to remain unaffected by the change of parties? The question was both national and local. And perhaps in no state was its local significance illustrated so well as in New York.

It must be remembered that at this time that unwritten dictum of our constitution by which the president is chosen directly by the voters of the states had not been fully developed. The rise of parties had, indeed, already deprived the presidential electors of much of the independence of choice which the constitution had probably intended

them to enjoy, but in 1800 they were still chosen by the legislatures in most of the states.<sup>1</sup> It was possible, therefore, to predict approximately the result of the presidential election as soon as the political majority of the electing legislatures was known. Seventy electoral votes were necessary for election. Early in May, 1800, when the New York elections were held, the republicans were counting with reasonable certainty on sixty-one of these, although their confidence fell perceptibly as the months drew on.<sup>2</sup> At the time, however, it seemed that, if New York should elect a republican legislature, the twelve votes of that state would render Jefferson's election highly probable.<sup>3</sup> It was thus that New York became for the moment the pivot upon which the hopes of the contending parties were balanced, and the state elections were lifted into national importance.

How the contest for votes in the New York elections was fought out under the opposing generalships of Hamilton and Burr is too much a matter of general knowledge to excuse its repetition. Burr had with consummate skill chosen a ticket that would harmonize all jealousies of faction among the elements of his party.<sup>4</sup> He had created a campaign organization not nearly as far behind methods of the present day as it was in advance of those of his own. When the result was known it was seen that the republican triumph was complete, for, while the federalists counted in the senate a majority of six, the republicans had a majority of twenty-five in the assembly.<sup>5</sup> And republican

<sup>1</sup> In Rhode Island, Maryland, Virginia and North Carolina electors were chosen by the people; Stanwood, *History of the Presidency*, 63.

<sup>2</sup> *Ibid.*, 59, 60.

<sup>3</sup> Hamilton to Jay, May 7, 1800; Jay, *Life of John Jay*, i, 412; Hamilton, *Works* (Lodge ed.), viii, 549.

<sup>4</sup> Hammond, *op. cit.*, i, 136.

<sup>5</sup> *Senate Journal*, xxiv, 9; *Assembly Journal*, xxiv, 12.



victory in New York in the spring of 1800 predicted a republican victory in the nation in the fall.

Nobody realized this more fully than Alexander Hamilton and nobody desired more keenly than he to prevent it. Hoping even in the face of defeat at the polls to save a majority of the electoral votes to the federalists, he wrote to Governor Jay strongly urging him to call the existing federalist legislature together for the purpose of choosing electors by districts. It was the famous letter to which Jay did not reply but upon which was found endorsed in his own handwriting: "Proposing a measure for party purposes, which I think it would not become me to adopt."<sup>1</sup>

Not the least significant event in the general upheaval of New York politics in 1800 was that which brought DeWitt Clinton forward as the chief of the republican party—if indeed a party with so many factious elements can be said to have had a chief. Young, energetic, dominating, it is not far to seek why such a revolution of politics should have swept him to the front, and it is even more easily understood why he should have left upon that revolution the imprint of his forceful personality. Both in his public and his private life his morals were good, but he had none of the sentimentalism that halted before the shattering of a precedent which he conceived to be ill-founded. He seldom broke forth into explanation of his plans or theories, but he had little to hide and was never unscrupulous. His mind was big and his heart was big, but his sympathies could not be played upon. He was ambitious of leadership but most of his ambitions were justified by his superior ability. He lacked perhaps the theoretic constructiveness of mind necessary to a great statesman, but he certainly was far above the intrigue and cunning of the

<sup>1</sup>Jay, *Life of John Jay*, i, 414; Hamilton *Works* (Lodge ed.), viii, 551, note.

mere politician. A scientist by predilection and always a lover of books, it is probable that, had not opportunity and environment swept him early into the vortex of politics, he might have attained eminence and distinction in a more academic career, but he was far from despising the game he had chosen to play. He has left us in his papers and letters no detailed outline of his beliefs on questions of the day. On scientific and historical subjects he is always verbose, but he seldom discussed political questions in the abstract. Politics was the business of his life and he seems to have concerned himself only with its practical problems. He had a mind for the concrete—perhaps it may be said for the constructively concrete when it is considered that the Erie Canal stands as the greatest monument to his genius.

The training of his young manhood had been such as eminently to fit him for the position of chief of his party at the age of thirty-two. His grandfather, Charles Clinton, an Irishman born of English stock, had emigrated to America in 1729 and had settled eventually in Ulster, now Orange, County, New York.<sup>1</sup> Here his father, James Clinton, and his uncle, George Clinton, were born and here at the hands of a redemptioner they received their education.<sup>2</sup> DeWitt Clinton was born at Little Britain, Orange County, in March, 1769. With the Anglo-Celtic blood of his father in his veins flowed the Teutonic element of his mother, Mary DeWitt, a woman of highly respectable Dutch descent. Prepared for college at Kingston Academy, then perhaps the best institution of its kind in the State, he entered Columbia College in 1784 as the first

<sup>1</sup> For an account of the Clinton family, George Clinton, *Public Papers*, xxiii, 6310.

<sup>2</sup> *Ibid.*

student matriculated after the revolution,<sup>1</sup> and was graduated with honors two years later.<sup>2</sup> The next three years were given over to the study of law with Samuel Jones, but the summer of 1788 found him, a youth of nineteen, a violent anti-adoptionist, along with his uncle, the governor, in daily attendance upon the sessions of the Poughkeepsie convention and reporting the debates for a New York paper of the opposition. Although admitted to the bar in 1790<sup>3</sup> he abandoned all active practice of the law to become secretary to the governor. In this capacity, which he exercised in conjunction with that of secretary of the board of regents and of the board of fortifications of New York, young Clinton received admirable training for his subsequent career of politics. The year 1795 witnessed the overthrow of the republican party in New York, and DeWitt Clinton turned for a few years to the practice of law.<sup>4</sup> But the active game of politics lured him on. Defeated in 1796 for the assembly, he was successful a year later, and 1798 found him a senator from the southern district. His career in the legislature was not without dis-

<sup>1</sup> Clinton had, with his father, reached New York on his way to enter Princeton when Mayor Duane stopped him. It seems highly probable that the arrangements then making for the reopening of Columbia College were expedited in order to avoid the mortification of seeing the governor's nephew forced to go out of the state for his collegiate training. Letter from Dr. William Cochrane, quoted in Hosack, *Memoir of DeWitt Clinton*, 30.

<sup>2</sup> Clinton delivered an oration in Latin at the commencement of 1786 "with a polite and well adapted salutation in the same language to the members of Congress, the Legislature, the Regents and Professors, and to the Public at large." Both Congress and the state legislature then in session in the city suspended to attend the exercises; *Annals of New York City for the Year 1786*, 124, 125.

<sup>3</sup> Wilson, *Memorial History of New York*, iii, 60; facsimile of the roll for attorneys sworn in the supreme court.

<sup>4</sup> His partner was John McKesson; Renwick, *Life of DeWitt Clinton*, 46.

tion, and his personality soon began to attract to him a substantial portion of those who had formerly followed the lead of George Clinton.

DeWitt Clinton watched the New York election of 1800 with intense interest. He was as keenly alive to its national significance as was Hamilton, and he was no less eager for Jefferson's elevation to the presidency than Hamilton was to forestall such an issue. Before the complete returns from the polls had been received, he wrote to Solomon Southwick, one of the editors of the Albany Register:

I thank you for your favor of the 12<sup>th</sup> instant. It contains information of some of the Northern Counties of which I was not before hopeful and which compared with the result of our elections elsewhere, places it beyond doubt that Jefferson will have the voice of this State for President. The consequence has been dismay & despair to our adversaries: Some others talk of abandoning the Country and all of them seem to give up their cause as lost: like most other companions in misfortune, they endeavor to shift the blame off from themselves upon others and their distress and dissatisfaction encrease: It has given an electrical shock to the Cabinet at Philadelphia—Mr. Henry has resigned upon a broad hint—Pinckney would not take it and has been removed—The additional standing army is to be disbanded on the 15<sup>th</sup> of next month. These measures have been taken it is supposed with a view to softening if not of conciliating the republican party: Our prospects in most of the States South are almost equally good—they brighten even in Connecticut: all the calculating men—trimmers—office seekers—worshippers of power—who compose not an inconsiderable part of the community will now come over to us. In a word, the failure of aristocracy which has been erecting with so much care and whose architects have been exhausting their powers upon for nearly twelve years must tumble into ruin.<sup>1</sup>

<sup>1</sup> May 17, 1800; *DeWitt Clinton Papers*, ii, 175-177.

The legislature which had been elected in May came together for the first time on the fourth of November. Not since 1794 had the situation of a governor and legislature of different politics been offered in New York. Scarcely had the relative strength of the two parties been shown in the vote on the choice of presidential electors when Adam Comstock brought in a resolution for a new council of appointment. The consideration of the resolution was postponed for one day, but on the seventh of November it was adopted by a strictly party vote,<sup>1</sup> and DeWitt Clinton, Ambrose Spencer, Robert Roseboom and John Sanders were the senators chosen. All but John Sanders were republicans and the reason why he was chosen instead of a fourth republican is not difficult to see. The constitution required that the council of appointment consist of one senator from each of the four senatorial districts, and the eastern district had sent up to the senate a solid phalanx of federalists.

Comstock, who introduced the resolution, had a grievance against the federalist council which in 1794 had been elected before its time to secure the appointment of Egbert Benson to the supreme bench. It will be remembered that he had been dropped without assigned cause when the council made up the new list of magistrates for Saratoga county.<sup>2</sup> He was determined now to show to the defeated federalists the same measure of charity that had been meted to him; and the republicans in the assembly, flushed with their recent victory and perhaps eager to get at the flesh-pots still wholly in the camp of the enemy, did not fall far behind his generous lead. In vain did the fed-

<sup>1</sup> *Assembly Journal*, xxiv, 15.

<sup>2</sup> Adam Comstock, Beriah Palmer, Jabez Davis to the Council, February 4, 1795; *Civil Files of the Council of Appointment*.

eralists protest against the constitutionality of the appointment of a new council. Their protest, in the light of their own action under similar circumstances a few years previous, only redounded to their stultification.

It appears from his correspondence that DeWitt Clinton had in mind, from the time when the result of the spring elections was known, the possibilities which would lie in the hands of a republican council. It is probable, too, that he had his eye on a seat in that council for himself. In the letter to Southwick already mentioned, after giving a table of the May elections for the assembly, he adds: "Giving them [the federalists] all the doubtful ones and those we have not heard from we have an abundance to spare on a joint ballot: Our Senators from this [the Southern] and the Middle district have succeeded and Roseboom<sup>1</sup> from the Western, no doubt, which will give us a republican Council."<sup>2</sup> There is no evidence to show, however, that DeWitt Clinton had any other thought than that the council would be appointed as usual in the month of January.

The desire of the assembly to see a republican council immediately installed was not, however, realized. Whether the new council did not believe in the legality of their superseding the old council before the expiration of their year of service, or whether they made an unsuccessful attempt to sit does not appear. The minutes of council do not record any such attempt, and the existing council lived out its legal term, having held its first meeting February

<sup>1</sup>Roseboom was the only republican senator chosen from the Western district and none were chosen from the eastern (*Senate Journal*, xxiv, 3, 9). Since the council consisted of one senator from each of the four districts, it is clear that the republican majority in the council depended on Roseboom's election to the senate.

<sup>2</sup>*DeWitt Clinton Papers*, ii, 177.

7, 1800 and its last, January 28, 1801.<sup>1</sup> The new council held its first meeting February 11, 1801.<sup>2</sup> The next succeeding council was not appointed until the thirtieth of January, 1802.<sup>3</sup> It seems, therefore, that the council appointed in the fall of 1800, technically at least, existed for the unconstitutional period of fourteen months.

It was in this position as one of four members of the council of appointment that DeWitt Clinton came to be recognized as perhaps the dominant factor in New York politics. Many had held the position before him without achieving either fame or power. But the moment was critical; the council was small; a majority of its members including Clinton were of the triumphant incoming party; and the political power which lay potentially in the hands of that council was enormous. It was easy to see that under such circumstances a man of Clinton's overtopping personality would come into the exercise of his own strength. Of the two other republican members of the council Roseboom was plastic and Ambrose Spencer was thoroughly in sympathy with Clinton. In fact it was in this council that there grew up between Clinton and Spencer a strong friendship which, with the exception of a single brief interval of violent political estrangement, lasted through life.

Spencer's position in the council was unique. In 1794 he had been elected to the assembly as a federalist, and as such had warmly supported Hoffman's motion for the immediate appointment of a federalist council to serve with Governor George Clinton.<sup>4</sup> In 1797 he was chosen a mem-

<sup>1</sup> MS. *Minutes of the Council of Appointment*, iv, 187, 306.

<sup>2</sup> *Ibid.*, iv, 309.

<sup>3</sup> *Assembly Journal*, xxv, 38.

<sup>4</sup> *Assembly Journal*, xvii, 5; *Albany Gazette*, January 9, 1794; Hammond, *op. cit.*, i, 79; Barnard, *Discourse on the Life of Ambrose Spencer*, 33.

ber of a council of appointment which was unanimously federalist, but the next year he abandoned the federalist party and was elected to the senate as a republican. Whether he was moved to this by chagrin at not having his hopes of office rewarded<sup>1</sup> and the belief that his personal advancement could be best secured by alignment with the republicans, or whether he was prompted by a genuine and wholly honorable change of principles, was not positively proved at the time and probably never will be. There may have been color for the accusation of self-interest, but Spencer vigorously repelled the insinuation.<sup>2</sup> It may be said in extenuation not only that it was a period when alteration of political allegiance was common, but that Spencer's apostasy was accomplished in the open and two years before the final overthrow of the party of his original adoption. He was subsequently appointed attorney general of the state, and in 1804 upon the resignation of Radcliff was placed upon the bench of the supreme court where he rendered distinguished service first as associate judge and finally as chief justice. In the light of modern legal ethics Judge Spencer's later activity in politics<sup>3</sup> while occupying an exalted judicial position is far more reprehensible than his much censured change of politics.

Before we enter upon the history of the famous council of 1801 it is important to notice the extent of influence which lay in its control of the entire system of patronage in New York. Some idea of the vastness of that system may be grasped when it is considered that at that time almost none of the county and city offices were of local

<sup>1</sup> It was said that he was disappointed in not being appointed comptroller at the time when that office was created and filled by Samuel Jones; *Albany Gazette*, October 5, 1801.

<sup>2</sup> *Albany Register*, January 12, 1802; Hammond, *op. cit.*, i, 177.

<sup>3</sup> Barnard, *op. cit.*, 85; Fish, *The Civil Service and the Patronage*, 90, 91.



election or appointment. Not only the state officers—secretary of state, comptroller, attorney general, surveyor and commissary general—not only the whole judiciary from the chancellor down to the pettiest justice of the peace; but every district attorney, the mayor and recorder of every city, every county clerk, surrogate and sheriff, together with a whole army of auctioneers, coroners, masters and examiners in chancery, inspectors of turnpike roads, various commercial and mercantile inspectors, commissioners for sundry purposes and even public notaries, held their commissions from this council.<sup>1</sup> And there was in addition the vast number of officers in the militia. In the constitutional convention of 1821 the fact was brought out that 6663 civil appointments were in the gift of the council of appointment.<sup>2</sup> This meant in round numbers one appointment for every two hundred persons in the state. While the population of New York in 1800 was only a little more than a third as large as it was in 1820, the proportion of appointments was perhaps even greater.<sup>3</sup> In the year 1800 the minutes of the council record upwards of eight hundred appointments. It is easy to comprehend, therefore, what political influences could be sent ramifying throughout the state by a clever manipulation of the power of this council. The federalists during the administration of Governor Jay had shown by the policy of exclusion which they adopted that they fully recognized the possibilities which lay in the distribution of the patronage. The evolution of events in 1800 had thrust the younger element of the excluded party into power; it was inevitable that a fight over the spoils should occur.

<sup>1</sup> *Proceedings of the New York State Convention of 1821*, 86.

<sup>2</sup> *Ibid.*, 86; *Proceedings and Debates* (Carter and Stone, ed.), 297. The number of military appointments was 8280.

<sup>3</sup> The population in 1800 was 484,065; *2d U. S. Census Report*, 32. In 1820 it was 1,372,812; *4th U. S. Census Report*.

It has been pointed out that the newly chosen republican council did not meet until the expiration of the full term of the outgoing federalist council. But when they came together for the first time on the eleventh of February, 1801, they still had before them almost five months of service under the federalist governor.<sup>1</sup> The question naturally presented itself, will Governor Jay put in nomination the names of republicans agreeable to the majority of the council; or if he refuses to do so, will the council advise and consent to his federalist nominations?

It was evident from the first meeting of the council that Jay intended to dispute every inch of encroachment upon his authority. In a number of counties the commissions of sheriffs had expired and in consequence new commissions had to be issued. The minutes of this meeting record that Phineas Carll and Cornelius Bergen were reappointed sheriffs respectively of Suffolk and Kings counties.<sup>2</sup> Both of them had been chosen to office by federalist councils, Carll having been appointed in 1799 and Bergen in 1800.<sup>3</sup> Although the minutes bear no evidence of the fact, it seems that the governor almost immediately after these appointments were made raised the question as to his legal right to have all of his nominations entered upon the minute book, and the council after some discussion conceded the point so far as it related to nominations that were acted upon, "expressly declaring, however, that no inference of an admission of a right of nomination in the Governor should be drawn, but intending only from motives of courtesy, to consider his nominations in the light of recommendations proceeding from the chief magistrate of the State, and therefore, unless under peculiar circum-

<sup>1</sup> The governor's term expired July 1.

<sup>2</sup> MS. *Minutes of the Council*, iv, 309.

<sup>3</sup> *Ibid.*, iv, 122, 189.

stances, entitled to respectful consideration.”<sup>1</sup> The concession was a departure from precedent in the keeping of the council minutes and certainly it is doubtful whether Jay was sound in his contention that the law required it.<sup>2</sup> The question, however, served to bring out two things; that Jay was on guard and that DeWitt Clinton was preparing to dispute the governor’s claim to the exclusive right of nomination. The next minute entered upon the record is eloquent both of the feeling which existed and of the attitude of the parties concerned. “His Excellency the Governor having nominated Jessee Thompson for the office of Sheriff of the County of Dutchess, the Council, excepting Mr Sanders, did not consent to his appointment.”<sup>3</sup> Seven further attempts did the governor and Mr. Sanders make to appoint a sheriff for Dutchess, and as often did the three republican councillors refuse to consent.<sup>4</sup> They asserted afterward that all of the governor’s nominees for this office except one were federalists.<sup>5</sup> The governor declined to place in nomination any of the three candidates favored by the republican members, but the concurrent power of nomination by any member of the council was not pressed and the matter was dropped for the time.

At the same meeting the governor and the council agreed upon the reappointment of Abner Stone as sheriff of Washington county and George Hale as sheriff of Greene county. Both were probably mild federalists. The reappointment of Stone had been opposed, but a score of affidavits and petitions bore evidence to his competency and to the general satisfaction that his previous appointment had

<sup>1</sup> *Assembly Journal*, xxiv, 198.

<sup>2</sup> *Laws of New York*, i, 1778, ch. 12, p. 23.

<sup>3</sup> MS. *Minutes of the Council of Appointment*, iv, 309.

<sup>4</sup> *Ibid.*, iv, 309, 310.

<sup>5</sup> *Assembly Journal*, xxiv, 199.

given. One of his supporters wrote: "I have understood that one of the objections to the appointment of Mr. Stone was that he had been heard to express himself in terms unfriendly to the General Government [;] it may be True: and it is as True that at different times I have heard him express his attachment thereTwo."<sup>1</sup> Although Hale's party affiliation does not directly appear, his appointment the year previous by a federalist council as first sheriff of the newly created Greene county had been made upon the recommendation of Caleb Benton,<sup>2</sup> a federalist assemblyman, who voted with his party against the appointment of Clinton, Spencer and Roseboom as councillors.<sup>3</sup> Aside from the insignificant appointment of a few coroners no other business was transacted at the first session of the republican council.

Two days later a brief sitting was held during which eleven coroners and two more sheriffs were appointed. The minutes of the meeting do not show that any of the governor's nominations were rejected.<sup>4</sup> Again on February 17 a session was held which, so far as it appears from the record, was not conspicuous for its lack of harmony, although some discussion without nomination took place over the question of suitable candidates for the sheriff's office in Orange and Schoharie counties,<sup>5</sup> and Jay claimed<sup>6</sup>

<sup>1</sup> Thomas Smith to the Council, March 10, 1800; *Civil Files of the Council of Appointment*. The *Albany Gazette* of August 17, 1801, placed the name of Abner Stone in a list of republicans whom Jay had retained in office.

<sup>2</sup> Letter signed by Stephen Day and Caleb Benton, March 27, 1800; *Civil Files of the Council of Appointment*.

<sup>3</sup> *Assembly Journal*, xxiv, 16.

<sup>4</sup> MS. *Minutes of the Council of Appointment*, iv, 311-313.

<sup>5</sup> *Assembly Journal*, xxiv, 199.

<sup>6</sup> *Ibid.*, 123.

subsequently that one nomination was negatived.<sup>1</sup> Twenty-four coroners, four sheriffs and one vendue master, or auctioneer, were agreed upon.

At the meeting on the twenty-fourth, however, Jay and DeWitt Clinton were brought face to face with the difficulty of carrying on the work of the council without the concession which neither of them was willing to yield. Four sheriffs and half a dozen coroners were nominated by the governor and consented to by the council.<sup>2</sup> But when the governor placed successively before the council three names for the office of sheriff of Schoharie they were rejected.<sup>3</sup> The majority of the council determined also to rescind the action of February 11, by which the governor's nominations were to be entered upon the minutes. The minutes record:<sup>4</sup>

His Excellency the Governor proposed, that the Secretary be directed to enter on the minutes of their proceedings, all nominations to office agreeably to the direction of the 8th Section of the Act entitled "an act to organise the Government of this State" passed the 16th March, 1778. The question being put was carried in the negative, with the exception of Mr. Sanders who agreed to the same, but the other members of the Council dissented, because from the first organization of the Government, until the meeting of the present Council, the entries in the minutes of the Council have as they believe invariably been otherwise, and because the Council do not admit, but deny that the right of nomination exists in the

<sup>1</sup>There is no minute of such a nomination. MS. *Minutes of the Council of Appointment*, iv, 313-316. Under the rule of the council of February 11, a minute should have been entered had the nomination been made.

<sup>2</sup>MS. *Minutes of the Council of Appointment*, iv, 319, 320.

<sup>3</sup>*Assembly Journal*, xxiv, 123, 199.

<sup>4</sup>MS. *Minutes of the Council of Appointment*, iv, 318, 319; *Albany Gazette*, February 26, 1801.

Governor exclusively, which His Excellency claims and insists upon,

Because such a procedure can have no other tendency than unnecessarily to swell the minutes of the Council, and,

Because, in the opinion of the Council, the Statute referred to by His Excellency the Governor does not direct the entry of nominations, whether made by the Governor or any other members of the Council, but applies only to such cases where appointments are consequent upon nominations

Having failed in getting the council to consent to any of his nominations for the sheriff of Schoharie, Jay declined to put in nomination the name of Peter I. Vrooman whom the republican councillors had at a previous meeting indicated as their choice.<sup>1</sup> The appointment of a sheriff for Orange brought out a second series of nominations and rejections. On the third nomination of the governor, however, the name of John Nicholson being presented, it became evident to the republican members, as they afterward expressed it, "that his Excellency had resolved, either not to name at all the persons agreeable to the majority of the Council, and in every respect unexceptionable, or to nominate them after certain purposes of excitement were answered. The Council, under these peculiar and extraordinary circumstances, interfered and refused to vote upon this proposition."<sup>2</sup> It was then for the first time since their coming together that DeWitt Clinton claimed the power of nomination. Seeing the impossibility of forcing Jay to nominate the candidate desired by the republicans, he placed before the council the name of John Blake, junior, in the form of a motion to appoint.<sup>3</sup> The governor, claiming the exclusive right of nomination, was unwilling to put the question. Instead, he "observed that it would be proper

<sup>1</sup> *Assembly Journal*, xxiv, 199.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Albany Gazette*, February 26, 1801.

for him to consider what ought to be his conduct thereto, and at the same time requested that an entry thereof should be made on the minutes with a declaration that nothing should be intended thereby to contravene the resolution of the council adopted previously at this meeting.”<sup>1</sup>

The council thereupon adjourned, and Jay, acting upon his constitutional prerogative, never reconvened it. The result was that the judges and justices of several counties, the mayors of four cities—New York, Albany, Hudson and Schenectady—the sheriffs of eight counties, the auctioneers of the state, and a number of other officers<sup>2</sup> remained unappointed until some time after Jay had completed his term as governor. It does not appear in all cases<sup>3</sup> whether the incumbents of these offices continued to act after the expiration of their commissions in the spring until appointments were made in the early fall, or whether the law-abiding spirit of the people was sufficient to tide them over the temporary absence of administrative and judicial officers.

The situation was certainly embarrassing. It is difficult even at this late day to fix just blame either upon Governor Jay or upon DeWitt Clinton and the other republican councillors. Jay stood upon the ground that, believing as he did that the right to nominate was by the constitution vested exclusively in the governor, he ought not to be expected to violate his oath to administer the government to the best of his knowledge in conformity with the powers delegated to him by the constitution.<sup>4</sup> Of course the necessity for the exercise of the concurrent power could have been avoided by his consenting to nominate only names

<sup>1</sup> MS. *Minutes of the Council of Appointment*, iv, 321.

<sup>2</sup> *Assembly Journal*, xxiv, 320.

<sup>3</sup> In the case of auctioneers an act was passed extending their commissions; *Laws of New York, 1801*, ch. 116, p. 268.

<sup>4</sup> *Assembly Journal*, xxiv, 123.

agreeable to the republican majority of his council. It would have necessitated his becoming the temporary tool of the party of the majority for the sake of harmony in the executive branch of the government and to prevent an awkward suspension of a vital executive function. He may have considered that such a course would be technical treachery to his party; he may have considered that it would mean *de facto* surrender of the initiative and independence of action vested in him by the spirit of the constitution. George Clinton in a similar situation in 1794 had under repeated protest yielded to the demand of a concurrent right of nomination on the part of his federalist council.<sup>1</sup> He had had it in his power to forestall every appointment in the state for a period of eighteen months. In more than one respect he saw his power overridden and those opposed to him in politics lifted over his veto into office. And George Clinton was never accused of lacking party spirit.

On the other hand it was not reasonable to suppose that DeWitt Clinton and his republican colleagues in the council, raised into power by the recent victory of their party at the polls, and backed by the precedent which their opponents had successfully established seven years before, would be willing supinely to voice the appointment of the governor's nominees, presumably men of his own party. The bulk of the patronage was in the hands of the federalists; could it be expected that they would acquiesce in increasing that bulk?

Under the circumstances it is not nearly so remarkable that a deadlock ensued between the governor and the council as that they were enabled to harmonize upon as many appointments as they actually made. During the five ses-

<sup>1</sup> *Albany Gazette*, October 23, 1794.



sions of the council before Jay finally adjourned them, fifteen sheriffs, forty-seven coroners and one auctioneer were agreed upon.<sup>1</sup> In the case of the minor office of county coroner it is probable that the politics of the candidate was scarcely considered. The files of the council show that the appointment was seldom sought with any vigor. In fact there are among these papers very few letters from applicants for the position of coroner. In the appointment of the sheriffs it is worthy of note that concession, if there was any, seems to have been made to the governor. All of these with two exceptions were reappointments. They had been chosen originally under the federalist administration and were, therefore, under reasonable presumption, of the party of the governor.<sup>2</sup> One of them at least, Benjamin Gilbert, had been some years previously especially offensive to the republicans,<sup>3</sup> and Philip Schuyler had accused George Clinton of removing him from the shrievalty of Otsego without cause.<sup>4</sup> He had been restored to office under the federalists and was now recommissioned by the vote of the republican council. Robert Williams, who was finally chosen sheriff of Dutchess

<sup>1</sup>MS. *Minutes of the Council of Appointment*, iv, 309-320.

<sup>2</sup>MS. *Minutes of the Council of Appointment*. Phineas Carll, appointed sheriff of Suffolk in 1799, iv, 122; Cornelius Bergen, of Kings in 1800, iv, 189; George Hale, of Green in 1800, iv, 240; Abner Stone, of Washington in 1798, iv, 28; William Barker, of Westchester in 1799, iv, 150, 151; Peter Stevens, of Rockland in 1800, iv, 197; Chauncey Woodruff, of Herkimer in 1798, iv, 46; John Wilson, of Steuben in 1800, iv, 211; Uri Tracey, of Chenango in 1798, iv, 50; Thomas Stowers, of Essex in 1799, iv, 130; Guy Maxwell, of Tioga in 1800, iv, 195; Roger Sprague, of Ontario in 1798, iv, 4.

<sup>3</sup>Hammond, *op. cit.*, i, 85.

<sup>4</sup>See reply of Schuyler, Strong and Hitchcock, to Governor Clinton's accusation, *Civil Files of the Council of Appointment*, October 3, 1794. See same document in *Albany Gazette*, October 23, 1794.

county, was a republican.<sup>1</sup> His appointment was, therefore, a concession to the republican councillors. It does not appear whether the other newly appointed sheriff, Benjamin Greaves of Clinton, was a federalist or a republican.

On the whole DeWitt Clinton seems to have borne himself with reasonable moderation toward Jay. It is significant that no attempt was made to remove any federalist from office. The contest for political control of the patronage was fought only over vacancies legally existing; and in almost every case in which a sheriff was appointed to one of these vacancies, the republican members voted for a candidate who, whatever the color of his politics, had in the first instance at least been the choice of Governor Jay and a federalist council. A candid review of the records which survive reveals nothing to indicate what has been repeatedly asserted, that Clinton and Spencer were desirous of producing a breach which would prevent the future action of the council under Jay.<sup>2</sup> It is difficult to see how the breach could have been prevented. The truth is that the whole history of Clinton's tilt with Jay in the spring of 1801 is nothing more than the old story of a struggle between two inflexible personalities, each armed with his own construction of the law, and neither willing to make the slightest compromise.

When Jay dismissed the council on the twenty-fourth of February there was probably no intention in his mind that they would not again be convened.<sup>3</sup> His real purpose was to call the two other departments of government to his aid in interpreting the troublesome clause of the constitution.

<sup>1</sup> MS. *Minutes of the Council of Appointment*, iv, 317; Hammond, *op. cit.*, i, 155.

<sup>2</sup> Hammond, *op. cit.*, i, 156; Alexander, *Political History of the State of New York*, i, 110, 111.

<sup>3</sup> *Assembly Journal*, xxiv, 198.

Two days later he sent a message to both houses of the legislature<sup>1</sup> in which he reviewed the proceedings in the council which had led to the rupture and called upon them to consider whether it had not "become indispensable, that the merits of these opposite and interfering claims to the right of nomination, should be ascertained and decided without delay."<sup>2</sup> "In whatever constitutional way," he went on, "whether by a declaratory statute, or by judgment of law, a decision may be made; and whether it should or should not correspond with the opinion I have expressed, I shall certainly acquiesce in and regulate my conduct by it."<sup>3</sup> He pointed out the fact that, anticipating future difficulty, he had in his first message to the legislature after coming into office endeavored without success to have the legislature construe the constitution upon this point at a time when the question was not a vital one.

The action of the council which seemed to have offended Jay most keenly was their refusal to vote upon his nomination of John Nicholson.

From what had formerly happened, it was not a matter of surprise to me that the Council should claim a concurrent right of nomination with me; but the refusal to vote on one of my nominations, and while it remained undecided, to nominate another person for the same office, were measures which, going to the exclusion of even a concurrent right in the Governor, appeared to me not a little extraordinary.<sup>4</sup>

It had evidently been the custom of the council to have in actual nomination only one name at a time. Before Clinton brought forward the nomination of Blake, he and his

<sup>1</sup> *Senate Journal*, xxiv, 53, 54; *Assembly Journal*, xxiv, 122-124.

<sup>2</sup> *Assembly Journal*, xxiv, 123.

<sup>3</sup> *Ibid.*, xxiv, 123, 124.

<sup>4</sup> *Ibid.*, xxiv, 123.

republican colleagues had expressly refused to vote on Jay's nominee.

In all probability Jay did not seriously expect the legislature to vote either for or against his construction of the constitution. He must have realized that the question had at that time become far more political than legal; and he must have known that with a federalist senate and a republican assembly little headway could be made in the direction of a settlement. His purpose was evidently to exhaust every means at hand in the performance of his duty.

The day after the delivery of the governor's message a resolution warmly supported by Brockholst Livingston and John Swartwout<sup>1</sup> was offered to the effect "that the Legislature have no authority to interpose between the Executive and the Members of the Council of Appointment, touching the right of nomination."<sup>2</sup> The resolution was adopted by a party vote, although the federalists in a heated debate endeavored to carry a substitute in favor of a declaratory act.<sup>3</sup> Six years before they had as a party almost to a man voiced a resolution similar to that which they now struggled to defeat. The senate thereupon endeavored to secure the appointment of a joint committee of both houses to examine the question and report as to a proper mode of determining it,<sup>4</sup> but the assembly refused to concur.<sup>5</sup>

Finding that his efforts to secure an expression of opinion from the legislature were futile, Governor Jay next addressed himself to the judiciary. On the eighteenth of March he wrote to the chancellor, and to the chief justice

<sup>1</sup> *Albany Gazette, Supplement*, Feb. 28, 1801.

<sup>2</sup> *Assembly Journal*, xxiv, 129.

<sup>3</sup> *Ibid.*, xxiv, 129, 130; *Albany Gazette Supplement*, February 28, 1801.

<sup>4</sup> *Senate Journal*, xxiv, 63, 64; Clinton, Spencer and Roseboom opposed this resolution along with the republican wing of the senate.

<sup>5</sup> *Assembly Journal*, xxiv, 162.

and judges of the supreme court asking for an expression of the sentiments of the judicial department upon the now much ventilated question.<sup>1</sup> But neither Chief Justice Lansing nor Chancellor Livingston was willing to hazard an opinion. Both, it may be noted, were republican in their sympathies, but the three other members of the supreme court who replied to him, Benson, Kent and Radcliff, were federalists. Livingston grounded his refusal upon the fact that the constitution had not made the judiciary an advisory council. He wrote:

If in controversies between different members of the executive, the judges are bound to decide extrajudicially, they are equally bound to give their opinions on the requisition of the Legislature. It is obvious, sir, that this would by degrees lead them into political controversies, incompatible with the duties of their offices, and convert them into mantelets to receive the shot, while the leaders of parties fought securely under their protection.<sup>2</sup>

By the middle of March it became evident to the republican members of the adjourned council that Governor Jay had then no intention of reassembling them. Feeling that their side of the dispute had been given no official expression they drew up and submitted to the assembly<sup>3</sup> a lengthy exposition of the history of the controversy, the legal grounds upon which their stand had been made, and the precedents by which they had in a measure been guided. In the recital of facts their communication differed from that of the governor only in additional and perhaps unessential points. They endeavored to show, however, that their idea of the point at issue was somewhat at variance

<sup>1</sup> *Albany Gazette*, March 30, 1801.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Assembly Journal*, xxiv, 198-201. On March 20, 1801, the *Albany Register* published an extra edition containing the communication.

with that of the governor. They went to the extent of claiming for the council not only a concurrent but an exclusive power of nomination.

The question between him [the governor] and the Council was, whether the right of exclusive nomination is vested in him. The claim of concurrent nomination was never suggested by his Excellency, nor considered by the Council, as the real point in the contest. Although they do not believe that any right of nomination in strictness exists in the Governor at all, yet for the sake of concord, they have in every instance, except in the case of Mr. Nicholson, admitted it to be concurrent in him, in its fullest extent; and although they are persuaded that it is exclusively entrusted to the Council, yet they have not, except in that solitary instance, exercised it. The like moderation, and the same spirit of conciliation, on the part of his Excellency, would have suppressed every source of difficulty, and every motive of disagreement.<sup>1</sup>

Although the language is not very clear the imputation at best is that the governor, in stating that it had not been a matter of surprise to him that the council should claim a concurrent right of nomination with him, had implied that the point at issue was whether a concurrent right of nomination did or did not belong to the council. They wished to emphasize the fact that the question of concurrent nomination had not been raised. They believed that the right under the constitution lay exclusively in them and not concurrently in the governor and the council. Governor Jay had by their sufferance been permitted to exercise a right which in reality he did not enjoy even in concurrence with the council. The point of difference was somewhat overstrained and is perhaps worthy of record

<sup>1</sup> *Assembly Journal*, xxiv, 199.

only because it shows that Clinton and Spencer were trying to read into the governor's message a spirit of unfairness which was certainly beneath him. The governor distinctly claimed the exclusive right of nomination; whether the republican council believed that they possessed the same right concurrently or exclusively mattered very little so far as the possibility of practical adjustment was concerned.

The communication breathed a spirit of grievance which was perhaps more intemperate than that of the governor, but there is little reason to believe that its framers were not as honest as the governor when they repudiated the accusation of personal interest. They conclude :

As the opinions now expressed have been formed long before we were members of the Council, we cannot be supposed to be actuated by an ambitious competition for power, or by an unwarrantable spirit of party. Our obligations are as sacred as his Excellency's: our convictions of duty as clear and impressive: and our line of conduct as plain and perspicuous. We have been honored by our country with an important trust, and we shall not betray that trust into the hands of any man.<sup>1</sup>

Governor Jay was not to be frightened into acquiescence by the prospect of "scenes productive of the most serious consequences to the welfare of the community."<sup>2</sup> He had exhausted the legitimate means at hand for securing a settlement outside of the council. He did not propose to yield the contention, and he saw nothing to be gained but increased bitterness by renewing the fight within the council. He, therefore, determined not to reconvene them unless assured that a majority would be willing to let the business of the council "again proceed in its accustomed

<sup>1</sup> *Assembly Journal*, xxiv, 201.

<sup>2</sup> *Albany Gazette Supplement*, March 19, 1801.

course, *until* their claim to change that course shall be decided in their favor.”<sup>1</sup>

One last attempt Jay did, indeed, make. On the twenty-eighth of March he turned over to the legislature copies of the letters he had received from the chancellor and the judges of the supreme court and suggested “that an act be passed to authorize and direct the Supreme Court to try and determine the question, on a proper issue, to be devised by them.”<sup>2</sup> A few days later Mr. Elisha Williams, a federalist assemblyman, who had earlier in the session warmly contended for a declaratory act,<sup>3</sup> introduced such a bill but the assembly promptly quashed the measure.<sup>4</sup>

The last days of the legislature found the appointment controversy still before them. On the sixth of April the senate made a final ill-conceived attempt to secure the concurrence of the assembly in some action leading to a settlement of the difficulty. But the resolution which passed the senate declared as the opinion of the legislature that it would be proper for the council to waive the question at issue with the governor and proceed to business.<sup>5</sup> The proposition had evidently been sprung upon the republican wing of the senate and DeWitt Clinton threw himself against it with fierce opposition. He offered as a substitute a resolution declaring:

That for the Senate and Assembly to prejudice, in their legislative capacity, the present controversy, by declaring an opinion on either side, will, as it may come before them in a judicial shape [in the form of an impeachment], be a sacrifice of principle, and a violation of duty, will be fruitless and unavailing,

<sup>1</sup> *Assembly Journal*, xxiv, 249.

<sup>2</sup> *Ibid.*, xxiv, 247-249.

<sup>3</sup> *Albany Gazette*, February 28, 1801.

<sup>4</sup> *Assembly Journal*, xxiv, 284, 285.

<sup>5</sup> *Senate Journal*, xxiv, 144.



will detract from the dignity, respectability and impartiality of the Legislature, and will have no other effect than to declare to their constituents that they are capable of the gross impropriety of wantonly deciding questions of the highest importance to the community in an unconstitutional way, without due investigation and consideration, without hearing the parties of the controversy, and without any possible advantage to the community.<sup>1</sup>

The resolution was of course extravagant in its denunciation of the federalist senators' attempt to coerce the councillors into submission. It was lost in the vote as was a second more temperate substitute<sup>2</sup> offered by Clinton, and the original resolution was sent to the assembly for concurrence. The republican assembly determined to have one last fling at the senate and the unyielding governor. A resolution was introduced by Erastus Root which briefly summed up the history of the efforts to secure a legislative decision upon the question and which concluded with an expression of the determination on the part of the assembly to persist in their former resolution to the effect that they had no authority to interfere.<sup>3</sup> It reflected upon the obstinacy of the senate; it reflected upon the conduct of the governor; and it suggested the possibility of impeachment in the fall. The house was thrown into violent debate over it,<sup>4</sup> but the resolution passed after some expurgations,<sup>5</sup> and when the senate demanded a copy of it the demand was refused them.<sup>6</sup> In retaliation they passed a resolution severely criticizing the action of the assembly,<sup>7</sup> and

<sup>1</sup> *Senate Journal*, xxiv, 144, 145.

<sup>2</sup> *Ibid.*, xxiv, 145.

<sup>3</sup> *Assembly Journal*, xxiv, 317.

<sup>4</sup> *Albany Gazette*, April 9, 1801.

<sup>5</sup> *Assembly Journal*, xxiv, 317-320.

<sup>6</sup> *Senate Journal*, xxiv, 156; *Assembly Journal*, xxiv, 321; *Albany Gazette*, April 9, 1801.

<sup>7</sup> *Senate Journal*, xxiv, 156.

the session of the legislature came to a close in the midst of criminations and recriminations. The federalist press took up the quarrel, and more than usual acrimony and vituperation were hurled into the approaching campaign for the election of governor. Especially was Ambrose Spencer, the "political cameleon," the discarded "fag-end of the federalist interest," made to bear the burden of abuse.<sup>1</sup>

DeWitt Clinton had been successfully forestalled by Jay in whatever plans he may have had for the distribution of the open patronage in New York in the spring of 1801. His coming into his own as leader of the republican party in his state had not been accomplished without commotion, but his conduct in the controversy which developed served to exhibit at once his weakness and his strength as a politician. He never showed any great power in the handling of men, and his inability to hit upon a working basis with Jay was an illustration of his tactlessness; but in every great movement of his life he manifested an overmastering belief in himself which carried conviction to those about him, and the loyalty with which his party supported him in 1801<sup>2</sup> was an evidence of his ability to command a following that was not wholly personal.

<sup>1</sup> *Albany Gazette*, April 13, 1801.

<sup>2</sup> Jay, *Life of John Jay*, i, 426.

## CHAPTER IV

### REPUBLICAN SPOILS IN 1801

CONSIDERING the violence of party strife which had characterized the closing months of his administration, Governor Jay probably had no cause to regret that he had, on the eighth of November preceding, declined to stand for re-election.<sup>1</sup> His determination to withdraw from public life at the end of his term of office had been formed some-time before, and its sincerity was even further evinced by his declining Adams's offer of the position he had formerly held as Chief Justice of the United States.<sup>2</sup> At the same time that Jay was nominated by the federalists for a third term as governor of New York, George Clinton, who had been out of active politics since 1795, was once more brought forward as the candidate of the republican party.<sup>3</sup> Two months later "at a numerous and respectable meeting of federal citizens" held at the Tontine Coffee House in New York, Stephen Van Rensselaer, the patroon, was placed in nomination as his opponent.<sup>4</sup>

The spring campaign was conducted with conspicuous intemperance by both parties. Neither of them could boast of victory in the conflict over appointments, but animosities had been enkindled on all sides and political passions flamed

<sup>1</sup> Letter to Richard Hatfield, chairman of the federalist meeting which had nominated him; *Albany Gazette*, November 13, 1800; Jay, *Correspondence and Public Papers*, iv, 278-280.

<sup>2</sup> Jay, *Life of John Jay*, i, 419, 420, 422; Jay, *Correspondence and Public Papers*, iv, 284-286.

<sup>3</sup> *Albany Gazette*, November 13, 1800.

<sup>4</sup> *Ibid.*, January 19, 1801.

high. The lie was passed and repassed; candidates and parties alike were abused and calumniated. The federalist press held up Clinton's past career in a light of their own making.<sup>1</sup> The republicans accused the patrol of threatening his thousands of delinquent tenants with prosecution if they failed to vote for him.<sup>2</sup> Few of the accusations so freely flung had any basis in fact. Van Rensselaer's election would have meant in all probability a prolongation of the struggle between the governor and the council of appointment. But the election in May terminated with a substantial majority<sup>3</sup> for the republicans, and on July first George Clinton entered upon his seventh term as governor of New York.

Although it was George Clinton who was raised to the office of chief magistrate of the state, it was in reality DeWitt Clinton who began to be looked upon as the leader of the party. And his position in the council of appointment gave him the opportunity not only to strengthen his control upon the party but to expand his ideas of party organization independently of the governor.

An examination of the files of the council for the year 1801, reveals the fact that the number of applications for office was enormously in advance of that of any previous year. In fact the files for that single year almost equal in volume those of the three years immediately preceding. While Governor Jay continued in office the petitions and applications addressed to him and the council did not generally urge the politics of the candidate as a reason for consideration. In letters addressed to the individual republi-

<sup>1</sup> *Albany Gazette*, April 16; April 27; May 7, 1801.

<sup>2</sup> *Albany Register*, April 3; April 10, 1801.

<sup>3</sup> Clinton's majority was nearly four thousand; *Civil List*, State of New York, 1888, 166; *Albany Gazette*, June 4, 1801.

can councillors political arguments were probably used, but these seldom found their way into the files. A letter to DeWitt Clinton from Gerard Smith Sloan, of Poughkeepsie, may indicate a method which was not unique. He wrote:

This moment M<sup>r</sup>. Solomon Fowler by request of some of the inhabitants of the town of Marlborough in Ulster County, handed me a petition which I enclose Recommending M<sup>r</sup>. Peter McCoun a respectable Merchant, Residing in the Town of Marlborough, as a proper person to be a Justice of the peace, as set forth in the petition. I will vouch for what is stated in the petition to be true. M<sup>r</sup>. McCoun is what we called a few years since a firm Clintonian. I beg leave to remind you to have if possible both M<sup>r</sup>. Lewis Kine and M<sup>r</sup>. Elisha Lester, appointed Justices of peace in the Town of New Paltz Ulster county, I also enclose a letter to his Excellency John Jay Esq<sup>r</sup>. Governor, recommending M<sup>r</sup>. McCoun, after you have read it please to Seal it and deliver the Same to M<sup>r</sup>. Jay.

The letter to Governor Jay was the usual formal recommendation containing no mention of politics.<sup>1</sup>

After George Clinton came into office the communications take on a more decidedly partisan character, although it is remarkable that a great many of them still make no allusion to politics. Probably in a majority of cases the council had information beyond what the files exhibit. There is not much evidence of any perfected system by which the minor county offices were to be filled to the best advantage from the point of view of party organization.<sup>2</sup> Only in isolated

<sup>1</sup> Gerard Smith Sloan to DeWitt Clinton; the same to John Jay, March 5, 1801; *Civil Files of the Council*.

<sup>2</sup> There are a number of papers containing county lists endorsed "Recommended for office," but it does not appear by whom the recommendations were made. These may have been only memoranda made up within the council.

instances does there seem to have been concerted local action on the subject. One list of names sent to the council was chosen "At a respectable meeting of the leading Republicans of the County of Oneida held at the house of Mr. J. Ives . . . agreeably to notice given for the purpose of recommending proper Characters in the said county to be promoted and appointed to office."<sup>1</sup>

The most striking thing about the applications in 1801 is the number of petitioners seeking appointment to the office of vendue master, or auctioneer, in New York City. In 1800 there were twenty-five men acting under commissions as auctioneers in the city and their commissions expired on the fifteenth of March.<sup>2</sup> Judging from the zeal and energy with which both reappointments and new appointments were sought, these commissions appear to have been from the financial point of view the most valuable within the gift of the council. Although the fact seems to have been largely overlooked by writers who touch upon the social and economic history of New York City, it is evident that the auctioneer in early times played a large part in the commercial and private economic life of the city. His function was chiefly the sale of imported goods. Sales by public auction were the subject of strict regulation by a law passed in 1784.<sup>3</sup> This law was amended in 1785,<sup>4</sup> and in 1801 a new act was passed by which the state received a duty of three per cent on all sales by public auction in New York City and two per cent on all such sales in any other county or city in the state. The fees of the auctioneer were limited to two and a half per cent except in case of a written agree-

<sup>1</sup>Signed by James Sheldon, chairman, July, 1801; *Civil Files of the Council*.

<sup>2</sup>*Laws of New York*, v, 1801, ch. 116, p. 268.

<sup>3</sup>*Laws of New York*, i, 1784, ch. iv, 590-594.

<sup>4</sup>*Laws of New York*, Greenleaf, i, 1785, ch. lxxx, 186.

ment between the owner and the auctioneer previous to the sale.<sup>1</sup> No one except a legally commissioned auctioneer could expose to sale at public outcry any goods except such as were exempt from auction duty. The exemptions included, among other things, land and tenements, effects of insolvent debtors, horses, cattle, hogs, sheep, and all articles of the growth, produce, or manufacture of the state.<sup>2</sup> Domestic articles were, therefore, not subject to monopoly of sale at auction. Instead of foreign goods being sold to American merchants for retailing, the method seems to have been for the auctioneers to receive them, expose them to public auction, deduct the state duty and their own commission and return the proceeds to the foreign exporter.<sup>3</sup> It does not appear what portion of the imports in 1801 was sold outright to jobbing merchants and what portion was handled by the auctioneers; but as time went on the monopoly of public auction which the law gave to the limited number of appointees seems to have increased to the extent of a total exclusion of private sales,<sup>4</sup> and the auction business reached mammoth proportions.<sup>5</sup> It became the object of a violent warfare waged by the merchants of

<sup>1</sup> *Laws of New York*, v, 1801, ch. cxvi, 264-268.

<sup>2</sup> *Ibid.*

<sup>3</sup> At least such was the system a quarter of a century later under the laws of 1817 which gave increased strength to the auction monopoly; *Niles Register*, xxxiv, 258-260.

<sup>4</sup> Previous to 1812 New York merchants purchased imports on a large scale in Boston; the sale of imports by auction in 1801 was, therefore, not so exclusive as it became subsequent to the War of 1812; *Merchant's Magazine*, x, 156. "The goods sent hither by foreigners are, almost without exception, sold at auction"; *Niles Register*, January 8, 1825, xxvii, 289.

<sup>5</sup> "A single auction house does as much business as would support fifty respectable firms in private trade, each consisting of two partners, maintaining two families, and two or three clerks;" *Niles Register*, June 14, 1828; xxxiv, 258.

New York,<sup>1</sup> but under the law of 1817 which "created a new era in the history of auctions," the revenue had become so valuable to the state that the legislature stoutly opposed any change.<sup>2</sup> The subsequent abnormal development of the auction monopoly affords some indication of the financial desirability of the appointment at the beginning of the century. Its importance is indicated not only by the number of applicants but by the fact that such men as Melancthon Smith and Schuyler Livingston were among them.<sup>3</sup>

It is as difficult to characterize in general terms the applications for these and other offices as it is to select typical instances from among them. Everything from revolutionary services to an innumerable and helpless family was brought forward in support of claims to consideration. Some urged politics and exclusion under the preceding administration; many did not. Some backed up their applications by a petition containing respectable and influential names; others did not. Some were dignified in their simplicity; others breathed the cringing spirit of the sycophant.

When the council came together on the eighth of August 1801<sup>4</sup> it was with no uncertainty of mind as to the course to be pursued. Since their adjournment by Jay in the early spring there had been ample time for the formulation of a definite policy, and the events of the intervening months had not been such as to shape that policy with moderation toward the federalist office-holders. As has been pointed

<sup>1</sup> *Merchant's Magazine*, x, 154, 155; *Niles Register*, xxi, 103; xxvii, 257, 258, 273-275, 289-291; xxxiv, 258, 259. The fight was even carried to Congress in the form of memorials.

<sup>2</sup> In the constitution of 1821, the revenue from auction sales was set aside for the payment of the state debt; Article vii, sec. 10.

<sup>3</sup> Appointed August 26, 1801; MS. *Minutes of the Council*, vi, 32.

<sup>4</sup> *Ibid.*, iv, 323.



out, the federalists under Jay in New York, as under Adams in the national government, had persistently pursued a policy of confining their appointments exclusively to those of their own party. Although some political removals had been made by both, nothing like a general policy of removal had been established. But DeWitt Clinton was too eager to see his party thoroughly installed in the administration of the government and in the enjoyment of the fruits of victory to await the slower process of filling vacancies as they might occur.

The plan of action which he seems to have laid down for himself was that the larger offices of the state should be filled immediately with republicans and that the smaller offices should be divided between the parties in proportion to their respective numbers.<sup>1</sup> If we may trust the account of the secretary of the council, himself a federalist removed from office, Clinton frankly stated his view at the first meeting of the council before a single removal was made.

Mr. DeWitt Clinton expressed a wish to make some observations to the council on the subject [of removing John V. Henry, state comptroller]—He observed, that for some years past, the administration of this state had been in hands which had made all the appointments in one way, to the entire exclusion of a large proportion of its Citizens—that the people of this state as well as of the United States, had expressed their disapprobation of that administration, & of the prin-

<sup>1</sup> Renwick, *Life of DeWitt Clinton*, 53-54. Renwick says: "It appears by written memoranda in his own hand, that his views of the proper mode of action under the new construction of the constitution was, that the offices of the state should be divided between the two opposing parties in the ratio of their respective numbers." The memoranda referred to have probably been lost from his papers, but it seems quite certain that so far as the lesser offices were concerned this was his view.

ciples by which it was governed, in the late elections for President of the United States, and the Chief Magistrate and Representatives for this state—that pursuant to the public opinion so expressed, he should feel it his duty to remove all the officers appointed under that administration—that he should concur in the removal of Mr. Henry, and the other Heads of Departments in the state, but did not suppose it would be proper to do more than equalize the officers in the respective counties.<sup>1</sup>

This was substantially in accord with the views expressed on the part of the whole council in an account published a few days later which, if not actually written by DeWitt Clinton, was certainly outlined by him.<sup>2</sup> It was clear that his program was the council's program.

No time was lost in giving expression to this scheme for the redistribution of the patronage. The first act was the appointment of Peter Vrooman and John Blake, junior, as sheriffs respectively of Schoharie and Orange counties.<sup>3</sup> It was upon the nomination of these names, it will be remembered, that the controversy with governor Jay had arisen in the spring. Two days later several republican sheriffs were appointed for counties in which such commissions had expired.<sup>4</sup> The council then turned its attention to the appointments for the several cities of the state.

From the birth of political parties to the year 1800 New York City had been the citadel of federalist influence in the state. Burr's shrewdly laid and cleverly executed cam-

<sup>1</sup> *Albany Gazette*, August 13, 1801.

<sup>2</sup> *Albany Register*, August 18, 1801. Clinton was accused of having written the article (*Albany Gazette*, August 24, 1801), but this was denied (*Albany Register*, August 25, 28, 1801).

<sup>3</sup> MS. *Minutes of the Council of Appointment*, iv, 323.

<sup>4</sup> *Ibid.*, iv, 325.

paign in the election of that year had broken through the stronghold of the enemy and New York had for the first time gone republican.<sup>1</sup> It was the beginning of a democratic rule which has persisted in the city, with negligible intermissions, to the present day.<sup>2</sup> The next year, in the gubernatorial election, the republicans were again triumphant in the city.<sup>3</sup> In the midst of the campaign Burr wrote: "The corporation have had the indecent hardness to appoint known and warm federalists (and no others) to be inspectors of the election in every ward. Hamilton works day and night . . . . Bets are two to one in his [Clinton's] favor, and . . . the friends of Van Rensselaer wager with reluctance with such odds."<sup>4</sup> A New York correspondent of the *Albany Register*,<sup>5</sup> under date of April 8, makes the same complaint against the corporation, especially accusing the mayor of malevolent discrimination against the republicans. "Hitherto," he says, "it has been the invariable rule of the [common] council to give to the republicans, in their clemency, one republican inspector at each ward, to two federal ones. But this time they have given us NONE."

The council of appointment was not unnaturally determined to strengthen the republican hold within the corporation. In 1789 Richard Varick had been appointed mayor of New York under George Clinton<sup>6</sup> and his com-

<sup>1</sup> Seven of the nine senators from the southern district that year (*Senate Journal*, xxiv, 9) and all of the assemblymen from New York (*Assembly Journal*, xxiv, 16) were republican.

<sup>2</sup> Roosevelt, *New York*, 157.

<sup>3</sup> The vote stood Clinton, 1266, Van Rensselaer, 1090; *Albany Gazette*, June 4, 1801.

<sup>4</sup> Davis, *Memoirs of Burr*, ii, 149.

<sup>5</sup> April 14, 1801.

<sup>6</sup> MS. *Minutes of the Council*, ii, 186.

mission had ever since been annually renewed. But Varick was a federalist,<sup>1</sup> as were the other officers of the city. Instead of recommissioning him, Edward Livingston, a republican member of congress and a brother of the chancellor, was appointed to the office of mayor. John Stagg, another republican, was at the same time appointed sheriff.<sup>2</sup> At the preceding meeting of the council, David Gelston, a republican and a friend of Burr, having resigned the office of surrogate of the city which he had held uninterruptedly since 1787,<sup>3</sup> Sylvanus Miller, a friend of DeWitt Clinton, was appointed in his place.<sup>4</sup> Three other changes were made in the personnel of the New York City officers at subsequent meetings,<sup>5</sup> and the council reached the limit of its power to purge the corporation of the inimical element.

In the case of the other city corporations no such drastic work was necessary. Thomas Jenkins, who had been appointed to the mayoralty of the city of Hudson by George Clinton in 1793<sup>6</sup> and had been retained in office by Jay, was recommissioned,<sup>7</sup> as were Thomas Frothingham, the clerk,<sup>8</sup> and Laban Paddock, the chief marshal,<sup>9</sup> but Elisha Pitkin was commissioned recorder in place of Cotton Gels-

<sup>1</sup> A public dinner was given him by the federalist lawyers of New York on his retirement from office; *Albany Gazette*, September 14, 1801.

<sup>2</sup> MS. *Minutes of the Council*, iv, 325, 326. <sup>3</sup> *Ibid.*, ii, 100.

<sup>4</sup> *Ibid.*, iv, 323. Miller seems not even to have made a written application to the council, although there were several others applying for the place (*Civil Files of the Council of Appointment*, 1801). His name and claims were probably presented by DeWitt Clinton.

<sup>5</sup> These were cases of actual removal and are, therefore, not on the same plane with the other appointments mentioned here.

<sup>6</sup> MS. *Minutes of the Council*, iii, 28.

<sup>7</sup> *Ibid.*, iv, 326.

<sup>8</sup> Frothingham had been appointed clerk of Hudson by George Clinton and his federalist council in 1794; *Ibid.*, iii, 84.

<sup>9</sup> Appointed first by Jay, March 16, 1799; *Ibid.*, iv, 143.

ton.<sup>1</sup> In Schenectady Joseph C. Yates, who seems to have been one of Jay's few republican appointments,<sup>2</sup> was retained as mayor. As an offset to Jay's clemency in the Schenectady appointment, federalists were retained in office in Albany. Philip S. Van Rensselaer, a federalist,<sup>3</sup> who had been appointed to the mayoralty by Jay in 1798,<sup>4</sup> was recommissioned; while John I. Cuyler, the sheriff, who belonged to the opposing party and had been among the last appointees of the outgoing federalist council,<sup>5</sup> was at the request of the republican citizens of Albany<sup>6</sup> allowed to continue in office and a year later was reappointed.<sup>7</sup>

It is worthy of note, moreover, that none of the changes of municipal officers made during the first two sittings of the council constituted a technical removal. In every case the appointment was made to a vacancy caused by the expiration of a commission which by law had to be renewed annually.<sup>8</sup> It was only when the council began to make changes in offices held at the pleasure of the council that actual removals were made. John V. Henry, the state comptroller, was the first to feel the axe.<sup>9</sup> Henry had been especially active in the assembly in the effort to further Governor Jay's desire for a legislative settlement of the appointment controversy.<sup>10</sup> It was stated that Ambrose Spencer in

<sup>1</sup> MS. *Minutes of the Council*, iv, 187, 326.

<sup>2</sup> *Ibid.*, iv, 60; *Albany Gazette*, August 17, 1801.

<sup>3</sup> In the *Albany Gazette* of March 29, 1799, we find that Philip Van Rensselaer presided over a meeting of federalists called to nominate members of the legislature.

<sup>4</sup> MS. *Minutes of the Council*, iv, 90.

<sup>5</sup> January 28, 1801: *Ibid.*, iv, 306.

<sup>6</sup> *Albany Gazette*, August 17, 1801.

<sup>7</sup> MS. *Minutes of the Council*, vi, 63.

<sup>8</sup> *Laws of New York*, Greenleaf, i, 1797, ch. i, pp. 355, 356.

<sup>9</sup> MS. *Minutes of the Council*, iv, 326.

<sup>10</sup> *Assembly Journal*, xxiv, 129; *Albany Gazette*, February 28, 1801.

proposing Henry's removal assigned as the basis for it his conduct in the assembly.<sup>1</sup> But this was denied, and Henry's removal was placed in the category of all other removals they were making, solely on the general grounds stated at the first session of the council.<sup>2</sup> He had been appointed comptroller in 1800 when Samuel Jones had declined re-appointment.<sup>3</sup> He was now superseded by Elisha Jenkins,<sup>4</sup> whose apostasy from the federalist party synchronized with that of Spencer.<sup>5</sup> At the same time that Henry was removed, Daniel Hale, the secretary of state, was also deposed.<sup>6</sup> The circumstances of Hale's dismissal were particularly dramatic in interest. By virtue of his office he was secretary of the council; he was therefore present at the time when his decapitation was proposed and discussed, and he was called upon to record upon the minutes his own warrant of dismissal. In an article published a few days later in the *Albany Gazette*<sup>7</sup> he describes how, after Mr. Henry's removal was accomplished,

A short pause then took place, during which Mr. Spencer walked to Mr. Clinton, whispered for a few moments, and returned to his place: after which, Mr. Clinton proposed to the Council, that the same resolution be entered as to the Secretary.—The question was put by the Governor, and carried un-animously.<sup>8</sup>

The Secretary then asked leave to put some questions to the Council in respect to himself, which was permitted, and after some evasions, on the part of Mr. DeWitt Clinton, who

<sup>1</sup> *Albany Gazette*, August 13, 1801.

<sup>2</sup> *Albany Register*, August 18, 1801.

<sup>3</sup> MS. *Minutes of the Council*, iv, 211, 218.

<sup>4</sup> *Ibid.*, iv, 326.

<sup>5</sup> Hammond, *op. cit.*, i, 174.

<sup>6</sup> MS. *Minutes of the Council*, iv, 326.

<sup>7</sup> August 13, 1801.

<sup>8</sup> Mr. Sanders, the federalist Councillor was absent; MS. *Minutes of the Council*, iv, 325.

declared that they were unnecessary, from the grounds on which he had already stated the removals were made, but the Secretary persisting, they were put and answered . . . .

The removal of Henry and Hale marked the beginning of a proscription which was tolerably thoroughgoing in the end. From meeting to meeting the execution went gradually on, interspersed by the filling of vacancies due to the expiration of commissions. It has been mentioned that several officers in New York City whose commissions were held at the pleasure of the council were removed in the general effort to strengthen the republican party in that city. Richard Harrison had in 1798 been appointed recorder to succeed James Kent when the latter was promoted to the supreme bench.<sup>1</sup> He now gave place to John B. Prevost.<sup>2</sup> Robert Benson, who had held the post of clerk of the city since his appointment by George Clinton, was succeeded by Tunis Wortman.<sup>3</sup> John McKesson became clerk of the circuit court<sup>4</sup> in place of William Coleman who had been appointed to office in the spring of the year preceding.<sup>5</sup>

There were in the state at the time six district attorneys, all of whom had been appointed by the federalists. Ambrose Spencer held one of these appointments, but he resigned the office at the first meeting of the council<sup>6</sup> under George Clinton; and Ebenezer Foot was appointed to fill the vacancy.<sup>7</sup> Of the other five district attorneys three were removed. Cadwallader D. Colden was displaced by

<sup>1</sup> MS. *Minutes of the Council*, iv, 22.

<sup>2</sup> *Ibid.*, vi, 28.

<sup>3</sup> *Ibid.*, vi, 28.

<sup>4</sup> *Ibid.*, vi, 29.

<sup>5</sup> *Ibid.*, iv, 220. A year later Coleman became editor of the *Evening Post*, the paper established in New York City under the direction and patronage of Alexander Hamilton.

<sup>6</sup> *Ibid.*, iv, 324.

<sup>7</sup> *Ibid.*, iv, 335.

Richard Riker, and Thomas R. Gold by Nathan Williams.<sup>1</sup> Conrad E. Elmendorf was also removed, and when Smith Thompson, the new appointee, declined to serve, Lucas Elmendorf was given the appointment.<sup>2</sup> Thus four of the six attorneys were, therefore, of new appointment. Of those retained in office it is perhaps worthy of note that one, Nathaniel W. Howells, had been appointed in 1799 to succeed William Stuart, removed without assigned cause.<sup>3</sup> A letter in the files of the council from the citizens of Montgomery county throws some light perhaps upon the retention in office of the other district attorney, George Metcalfe:

The undersigned have been given to understand that attempts will be made to remove George Metcalfe Esquire, the district attorney of that portion of the State of which this County forms a respectable part: and as we presume upon political grounds we as a portion of the citizens whose rights he has immediately in charge: beg the privilege of stating to you our sentiments on that subject—

We consider that the removal of incumbents from office, who have for a considerable time been in possession of their places, should never take place for "slight and transient causes;" and that men who have invariably discharged the duties of their offices with fidelity, vigilance and ability, ought seldom if ever to be removed from mere party considerations. . . . And we take the freedom of declaring to you that in our opinion the removal of a man of Mr. Metcalfe's character would, independent of the moral impropriety of the measure, be attended with auspicious political consequences.<sup>4</sup>

The office of Attorney General was held by Josiah Ogden

<sup>1</sup> MS. *Minutes of the Council*, vi, 14, 15.

<sup>2</sup> *Ibid.*, vi, 13, 34.

<sup>3</sup> *Ibid.*, iv, 102. Howells soon after resigned his office, May, 2, 1802, and William Stuart was restored; *ibid.*, vi, 76.

<sup>4</sup> *Civil Files of the Council* (no date), 1801.



Hoffman, a leading federalist and one who, it will be recalled, had been active in installing the federalist council in 1794. His was the only state office of first rank not disturbed by the council and the suspicion of some ulterior motive naturally arises. It is probable that there was an understanding between Hoffman and Ambrose Spencer, who had formerly been friends in politics at least, that as soon as the term of the existing council should expire Hoffman would resign his office in favor of Spencer, although Spencer seems to have denied afterward that any such agreement had been reached.<sup>1</sup> Many things, however, support the conclusion that such an arrangement existed. In August, 1801, at the first meeting of the council Spencer resigned his commission as attorney for the district composed of Columbia, Rensselaer, and Greene counties. Almost immediately upon the assembling of the succeeding council in February, 1802, Hoffman resigned the attorney-generalship and Spencer was appointed.<sup>2</sup> Some sort of understanding is still further hinted at by the fact that Ebenezer Foot, who, it has been noted, was appointed one of the district attorneys, was enthusiastically supported for the office of attorney general in a petition signed by twenty republican members of the legislature.<sup>3</sup> If Spencer was too careful of proprieties to countenance his own appointment to office by a council of which he himself was a member, he certainly displayed a more punctilious regard for trifles than did Reuben Hopkins, one of George Clinton's federalist councillors in 1794, who evidently felt that full decency had been met when he refrained from voting on the resolution which removed Thomas Moffat from the clerkship of Orange county and

<sup>1</sup> Hammond, *op. cit.*, i, 182; ii, 540.

<sup>2</sup> MS. *Minutes of the Council*, vi, 62.

<sup>3</sup> *Civil Files of the Council of Appointment* (no date), 1801.

placed him in the vacancy.<sup>1</sup> Such, however seems to have been the case.

Seven clerks of counties,<sup>2</sup> several masters in chancery,<sup>3</sup> a few county surrogates,<sup>4</sup> a commissioner and a deputy of military stores,<sup>5</sup> a commissioner of health<sup>6</sup> and perhaps a few other scattered officers were also removed during the several sessions of the republican council.

In a number of counties the time had arrived for the triennial commission of judicial officers required by the constitution.<sup>7</sup> These positions were of less importance than many others in the gift of the council, but they constituted by far the larger portion of its appointments. It was these that DeWitt Clinton probably had in mind when he said that it was his purpose only to equalize the smaller offices between the parties. In looking over the list of these small men it is obviously impossible to ascertain at this late day the political calling of each. How many of those retained in office were pronounced federalists of local influence it is impossible to say. But a comparison of the county rolls of 1798 with those of 1801 shows that the number of changes made in the latter year varies with the county. In some instances the alteration in the personnel of the civil list was scarcely more pronounced than that made in previous years when an entirely new series of commissions was issued; in others a large majority of those holding office were superseded. A few changes, of course, are accounted

<sup>1</sup> MS. *Minutes of the Council*, March 27, 1794, iii, 103. Hammond suggests that Spencer was influenced by an agitation which arose in 1797 while he was a member of the federalist council with a view to asserting the impropriety of a councillor's accepting office; *op. cit.*, i, 182.

<sup>2</sup> MS. *Minutes of the Council*, iv, 334; vi, 2, 9, 11, 47, 48, 59.

<sup>3</sup> *Ibid.*, iv, 332; vi, 31, 56.

<sup>4</sup> *Ibid.*, vi, 39, 59.

<sup>5</sup> *Ibid.*, vi, 13.

<sup>6</sup> *Ibid.*, vi, 21.

<sup>7</sup> Article xxviii, Poore, *Constitutions and Charters*, ii, 1337.

for by resignations, deaths and removals for cause during the intervening years.

Rockland was the first county for which a new civil roll was made out. The first judge was reappointed, as were the two "judges and justices of the peace," as they were called. Of the fourteen other names appearing on the list of 1798, eight reappear in 1801 and six new justices were created.<sup>1</sup> In Ontario county the proportion of those retained is even greater. Again the first judge and the two judges and justices were re-commissioned as was one of the two assistant judges and justices. Of the thirty-four justices of the peace appointed during Jay's administration, twenty-seven were reappointed in 1801 and four additions were made.<sup>2</sup> In the Chenango list, the first judge, three of the four judges and justices, and all six assistant judges and justices were reappointed, while thirty out of thirty-nine justices of peace received new commissions along with twelve additional appointments.<sup>3</sup> These figures are very far from appalling. But the rolls in some other counties exhibit a much more radical system of substitution. In Orange, for instance, while the first judge, four out of five judges and justices, and all six assistant justices were reappointed, only nine out of thirty justices of peace received a renewal of their commissions.<sup>4</sup>

In all these counties and in some others the constitutional term of three years had expired. In others, however, new commissions had been issued more recently. But the wording of the constitution was liberal. It prescribed that commis-

<sup>1</sup> MS. *Minutes of the Council*, iv, 47, 48, 331, 332.

<sup>2</sup> MS. *Minutes of the Council*, iv, compare pp. 3, 4, 156, 218, 264 with pp. 332, 333.

<sup>3</sup> *Ibid.*, iv, compare pp. 49, 50, 65, 157, 244, 248, 280, 298, 299, 301 with pp. 336, 337.

<sup>4</sup> *Ibid.*, iv, compare pp. 31, 32, 70, 136, 249 with pp. 339, 340.

sions should be issued "once at least in three years."<sup>1</sup> There was nothing to prevent the council from ordering at pleasure a new list at any time before the expiration of this outside margin, although this policy had not previously been pursued.<sup>2</sup> In some of these counties, as in Queens,<sup>3</sup> Onondaga,<sup>4</sup> Saratoga,<sup>5</sup> Clinton,<sup>6</sup> Herkimer,<sup>7</sup> Cayuga<sup>8</sup> and Albany,<sup>9</sup> no removals were made but additional commissions, varying in number from four to eighteen, were issued. In others, as in Montgomery<sup>10</sup> and Greene<sup>11</sup> a few removals were made and a number of names were added to the list. In still others, as in Otsego,<sup>12</sup> sweeping changes were made. In this county Jedediah Peck had been removed from office by Jay for political reasons<sup>13</sup> and had even been refused any information as to the complaints against him.<sup>14</sup> He was now restored to his judgeship. The other judge and the assistant judges were new, while only eleven of the forty-four justices were reappointed.

These typical instances are sufficient to show the way in which Clinton and his colleagues handled the general county appointments. If the proposed policy of equalizing the offices as between the parties in proportion to their respec-

<sup>1</sup> Article xxviii.

<sup>2</sup> It had been customary to renew all commissions at the time that the general appointments were made although frequently the holder had been specially appointed between the making out of the lists and his commission had not in consequence run for the full three years.

<sup>3</sup> MS. *Minutes of the Council*, iv, 329, 330.

<sup>4</sup> *Ibid.*, vi, 13, 25.

<sup>5</sup> *Ibid.*, 16.

<sup>6</sup> *Ibid.*, 23.

<sup>7</sup> *Ibid.*, 23.

<sup>8</sup> *Ibid.*, 26.

<sup>9</sup> *Ibid.*, 28.

<sup>10</sup> *Ibid.*, 15.

<sup>11</sup> *Ibid.*, 26.

<sup>12</sup> *Ibid.*, compare iv, pp. 255, 256, 273, 289, 296 with vi, pp. 1, 2.

<sup>13</sup> *Albany Register*, April 1, 1799; MS. *Minutes of the Council*, iv, 135; Hammond, *op. cit.*, i, 127, 128.

<sup>14</sup> MS. *Minutes of the Council*, iv, 150.

tive numbers was consistently carried out, the counties which showed a large republican majority at the polls should have enjoyed the greater number of changes while the federalist counties should have been subjected to fewer. While nothing like definite proportions are to be had, an examination of the relative strengths of the parties as shown in the election returns of May, 1801,<sup>1</sup> reveals the fact that this policy was at least approximately adopted. In Ontario and Chenango, for example, where the figures given above show comparatively few changes, the federalists were decidedly in the majority;<sup>2</sup> while in Rockland and Orange, where, as we have seen, the number of changes was far greater, the republicans were overwhelmingly in the majority.<sup>3</sup> In Albany the federalist poll was three times that of the republicans; no removals were made and only twelve additional commissions were issued.<sup>4</sup> In Cayuga the ratio of republicans to federalists was more than four to one; no removals were made but eighteen additional names were affixed to the list,<sup>5</sup> a large proportion for the population of the county. There were, of course, some apparent exceptions to this general scheme of apportionment,<sup>6</sup> but in the main it seems to have been followed with reasonable consistency, and as late as 1803 George Clinton wrote that a good deal yet remained to be done to equalize the appointments between the two parties.<sup>7</sup>

<sup>1</sup> *Albany Gazette*, June 4, 1801.

<sup>2</sup> The vote stood in Ontario, republican 770, federalist 1011; in Chenango, republican 711, federalist, 1343.

<sup>3</sup> In Rockland, republican 502, federalist 25; in Orange, republican 1590, federalist 369.

<sup>4</sup> MS. *Minutes of the Council*, vi, 28.

<sup>5</sup> *Ibid.*, vi, 26.

<sup>6</sup> As in Otsego. The sweeping changes in that county seem to have little ratio to the nearly equal strength of the parties. The vote stood: republican 1186, federalist 1062.

<sup>7</sup> George Clinton, *Public Papers*, xxvii, 7084.

The distribution of the minor county offices in 1801 has been elaborated at some length, but the detailed examination reveals two facts of importance. DeWitt Clinton actually transformed into practice his theory of dividing these offices proportionally between the parties. And in doing so he revealed in a degree the honesty of the motives which prompted him and the sincerity of his belief that the party which had been hitherto excluded from office-holding deserved its share of the offices. Had his design been only to strengthen his party with a view to the advancement of his own ambitious purposes, the plan pursued would certainly not have accomplished it. Where the party most called for strengthening was in the federalist sections of the state; but it was just in these sections that the republican appointments were smallest in number. A much more drastic system of purgation was loudly demanded by some of the friends of the administration. When the council adjourned on August 26 to meet again in October the Albany Register said:

On Wednesday the honorable the Council of Appointment adjourned.—It is said, that they will meet again in October, when, it is hoped, they will finish the laudable work they have begun—that of *equalizing* the offices of government, between the friends of Administration and the *Opposition*. Though this system is thought by some republicans, to be more liberal than an *opposition*, so violent, vindictive, and inimical to republican government, as that which the friends of Administration have to encounter, had a right to expect; yet a little reflection will convince them, that sound policy, as well as the wish of the Council to disregard the *intolerant* and *persecuting* example of their predecessors, in the time of Mr. Jay, equally enjoin the adoption of it.<sup>1</sup>

Besides the administrative and judicial offices in the gift

<sup>1</sup> *Albany Register*, August 28, 1801.

of the council there were not a few appointments to offices of a more strictly commercial nature. In these the emoluments were of paramount importance. Like the other offices they were being enjoyed almost exclusively by federalists. To the extent that they were more truly in the nature of spoils were they the more eagerly sought. The economic significance of the auctioneer, especially in New York City, has already been pointed out. The council evidently regarded this as an office which ought to be shared between the parties. Mr. Gallatin in a letter to Jefferson dated September 12, 1801, in adverting upon what he terms the system of "persecution" instituted by the council of appointment in New York, condemns the fact that they "have extended their removals to almost every auctioneer, and, that not being a political office, the two parties ought certainly to have an equal chance in such appointments."<sup>1</sup> But Mr. Gallatin was in error, and his error has been repeated without investigation by historians.<sup>2</sup> Of the twenty-five auctioneers holding commissions in New York City in 1800 according to the list sent to the council from the treasurer's office,<sup>3</sup> eleven were reappointed in 1801,<sup>4</sup> while one of them was at his own request<sup>5</sup> superseded by his grandson. Only twelve commissions were filled out for new appointees.<sup>6</sup> In the majority of cases it does not appear whether those who were reappointed were federalists

<sup>1</sup> Gallatin, *Writings*, i, 48.

<sup>2</sup> Adams, *History of the United States*, i, 229; Alexander, *Political History of New York*, i, 116.

<sup>3</sup> *Civil Files of the Council*.      <sup>4</sup> MS. *Minutes of the Council*, vi, 32.

<sup>5</sup> Letter of A. L. Bleecker recommending his grandson, James Bleecker, July 13, 1801; *Civil Files of the Council*.

<sup>6</sup> MS. *Minutes of the Council*, vi, 32. By a law of April 2, 1801, the number was limited to twenty-four; *Laws of New York*, 1801, ch. 116, p. 264.

or republicans. Most of their applications for reappointment do not mention politics.<sup>1</sup> It is presumable at least that some of them were federalists. In Suffolk county, where there seem to have been three auctioneers, one was removed, two were reappointed, and the number was increased to six.<sup>2</sup> In the other counties the appointment does not seem to have been of great importance. Various commercial inspectors also fell in the class of appointments where the perquisites constituted the sole importance of the office, the emoluments resulting from fees<sup>3</sup> for inspection. In many cases the holders of such commissions were superseded.<sup>4</sup>

The policy actually pursued by the council in 1801 may reasonably be taken as the objective expression of DeWitt Clinton's ideas upon the distribution of the state patronage. His scheme was well defined and consistently developed. The more important offices of the state and the municipal offices, especially those of New York City, were for the most part filled with republicans. The district attorneyships, the minor administrative and judicial offices of the counties, and the commercial appointments were approximately divided between the parties; and in the effort to reach this division with as little friction as possible no inconsiderable

<sup>1</sup> For example, letters of Anthony Bartow, June 10, 1801; Mordacai Myers, June 24, 1801; George Hunter, July 15, 1801; Charles McEvers, July 18, 1801; Martin Hoffman, July 22, 1801; A. L. Bleecker, July 13, 1801: *Civil Files of the Council*. John S. Henry does speak of himself as "an old republican," July 12, 1801; and Bartow, it will be seen later, was also a republican.

<sup>2</sup> MS. *Minutes of the Council*, iv, 72, 149, 150, 230, 252, 328, 329.

<sup>3</sup> Inspector of lumber, *Laws of New York*, Greenleaf, ii, 1790, ch. xxiii; of beef and pork, *ibid.*, Greenleaf, ii, 1788, ch. l; Andrews, 108; of flour and meal, Greenleaf, ii, 1788, ch. lviii; Andrews, 196, 821.

<sup>4</sup> MS. *Minutes of the Council*, vi, 6, 16, 26, 27, 29; John Lawrence to George Clinton, George Clinton, *Public Papers*, xxvi, 6882b.



number of minor offices were created. That DeWitt Clinton, along with Ambrose Spencer, was in reality the initiating genius of this system is shown by the fact that his uncle, the governor, refused in many instances to affix his name to the minutes of the council.<sup>1</sup> In other cases he signed only a part of the minutes<sup>2</sup> or caused his protest to be recorded against certain removals.<sup>3</sup> It is probable that he also conceded to the councillors the right of nomination<sup>4</sup> as he had done seven years before to his federalist council.

It is impossible to state the exact number of removals that were made by the council of 1801. Of the changes in the lists of judges and justices of peace in the counties it is almost impossible to ascertain which commissions had expired and which had not, although in some cases it is patent that the removal was made before the termination of the commission. If these be for the moment left out of consideration, the minutes show only thirty-one instances in which a writ of supersedeas was issued to the holder of a commission. But this does not comprehend the whole list of removals even outside of the county rolls, for in the case of inspectors and auctioneers,<sup>5</sup> a general statement was entered upon the minutes that a supersedeas should issue to all officers of a given class who had not received commissions under the existing council. It is difficult to find out how many officers were by such entries indicated as being superseded, but the whole number could not have amounted to very many. If a rigid line of distinction be made between those whose commissions were actually withdrawn and those for whom new commissions were not issued at

<sup>1</sup> MS. *Minutes of the Council*, iv, 338; vi, 10, 15, 27, 29, 32, 47, 48, 59.

<sup>2</sup> *Ibid.*, vi, 2.

<sup>3</sup> *Ibid.*, iv, 332.

<sup>4</sup> George Clinton, *Papers*, xxvi, 6870.

<sup>5</sup> MS. *Minutes of the Council*, vi, 27, 33, 37.

the legal expiration of their terms of office, the entire number of technical removals, even including those in the minor county offices, probably did not much exceed a hundred.<sup>1</sup> But as has been pointed out before, the renewal of the annual and triennial commissions had come to be much a matter of form, and the failure to renew was virtually equivalent to a removal. Any estimate of the total number of changes would be little short of conjecture.

By far the largest part of the removals were made during the August session of the council. The October session, probably owing to the fact that DeWitt Clinton was not present, lasted only two days, and only one removal was recorded.<sup>2</sup> During the final session, which lasted from December 30, 1801 to January 29, 1802, only four political removals were made<sup>3</sup> and only two new county lists were ordered.<sup>4</sup>

As might have been expected this summary method of despoiling the conquered of the fruits of office which the will of the people, expressed at the polls, could not directly take from them was vehemently denounced by the federalist press. Some of the removals were characterized as "the most infamous, atrocious, and outrageous acts of injustice, tyranny, and oppression, that ever disgraced the proceedings of a *Marat*, a *Danton*, or a *Robespierre*."<sup>5</sup> DeWitt Clinton and Spencer were stigmatized as "unprincipled tyrants"<sup>6</sup> and were accused of intending to place themselves on the supreme bench of the state.<sup>7</sup> Even the governor

<sup>1</sup>The statement made by Alexander that six or seven thousand appointments were made by the council is wholly incorrect; *Political History of New York*, i, 119.

<sup>2</sup>MS. *Minutes of the Council*, vi, 34-40.      <sup>3</sup>*Ibid.*, vi, 47, 48, 59.

<sup>4</sup>*Ibid.*, vi, 51, 52, 54, 55.      <sup>5</sup>*Albany Gazette*, August 13, 1801.

<sup>6</sup>*Ibid.*, August 24, 1801; see also *ibid.*, August 27, 31; September 3, 1801.

<sup>7</sup>*Ibid.*, August 17, 24, 1801.

whose non-concurrence in the proscription was generally known, was dubbed a weakling and was referred to as "an object of real pity," for not refusing to sign the writs of supersedeas as, it was averred, John Jay would have done without the least hesitation.<sup>1</sup> The republican press retaliated in kind. Governor Jay's systematic exclusion of the republicans from office was pointed to as the basal cause for the readjustment,<sup>2</sup> and the strenuous councillors were more than vindicated by the lusty voices of their party organs.

As a fitting climax to the work of the year the question of legal right as between the governor and the council was settled definitely and conclusively by an amendment to the fundamental law of the state in favor of the latter. Before the contest over the situation had reached its height in the spring session of the legislature, a bill had been introduced recommending<sup>3</sup> a convention in the fall for the purpose of reducing and limiting the number of senators and members of the assembly.<sup>4</sup> To this bill on March 26, the assembly added an amendment empowering the convention to determine also "whether any and what alterations shall be made in the 23d article of the constitution."<sup>5</sup> The senate concurred and the act became a law on the sixth of April.<sup>6</sup>

<sup>1</sup> *Albany Gazette*, August 17, 1801.

<sup>2</sup> *Albany Register*, August 18, 25, 28; September 1, 1801.

<sup>3</sup> The legislature could do nothing more than recommend, since the constitution of 1777 made no provision for a method of amendment.

<sup>4</sup> *Senate Journal*, xxiv, 76; *Assembly Journal*, xxiv, 184, 237, 244.

<sup>5</sup> *Assembly Journal*, xxiv, 237.

<sup>6</sup> Judge Lincoln, in his recent *Constitutional History of New York*, i, 607, 608, says: "It is probable that a convention would not have been called at that time for the sole purpose of considering the number of members of the legislature; but when a convention seemed necessary to settle the controversy over the Council of Appointment, the subject of the legislature was included." He appears, however, to be entirely in

The convention met in Albany, October 13, 1801, and as Burr expressed it, proceeded to consume fifteen days for the work of six hours.<sup>1</sup> DeWitt Clinton was elected a member of the convention but he did not attend its sessions. Hammond says that he was chosen from Kings and that he proposed the plan which was adopted.<sup>2</sup> As a matter of fact he was chosen from Queens,<sup>3</sup> and his name does not appear on any page of the proceedings of the convention and is unrecorded in any vote. The plan adopted was proposed by Lucas Elmendorf.<sup>4</sup> In the light of the communication which the republican councillors submitted to the assembly in the spring it seems far more probable that DeWitt Clinton would have advocated the plan offered by Thomas Tredwell.<sup>5</sup> This construction of the doubtful article gave the exclusive power of nomination to the members of the council, but it was enthusiastically negatived by the convention.<sup>6</sup> As further proof of the fact that DeWitt Clinton took no part in the convention we find that he did not attend the fall meeting of the Council of

error in this. Governor Jay had recommended a convention for reducing the number of legislators, and a bill for that purpose had been introduced into the senate by a special committee (*Journal*, xxiv, 48) long before the council controversy had been brought to legislative attention. That controversy had risen, however, before the bill passed the senate (*Journal*, xxiv, 76) yet no mention was made of the 23d article of the constitution. It remained for that to be added as an amendment in the assembly (*Journal*, xxiv, 237). The history of the passage of the act would almost indicate the reverse of Judge Lincoln's view; namely, that the convention would not have been called at that time for amending the clause constructing the council but for the fact that the movement for a convention had already been started for an entirely different purpose.

<sup>1</sup> Davis, *Memoirs of Burr*, ii, 158.

<sup>2</sup> *Op. cit.*, i, 164, 165.

<sup>3</sup> *Journal of the Convention of 1801*, 4.

<sup>4</sup> *Ibid.*, 18, 32.

<sup>5</sup> *Ibid.*, 29.

<sup>6</sup> *Ibid.*, 30, 31; the vote stood 93 to 6.

Appointment<sup>1</sup> which came together for its second session on October 28,<sup>2</sup> the day after the close of the convention. And the Albany Gazette of October 26 reveals the reason for his absence. "The Council of Appointment are to meet in this city, to-morrow," it says, "agreeable to adjournment. We understand that Mr. DeWitt Clinton, on account of ill health, will not be able to attend." None of the other councillors had been chosen to the convention.

The Clinton family, however, was not unrepresented. James Clinton, the father of DeWitt, and George Clinton, junior, his cousin, were both members. Aaron Burr, who had been sent up from Orange, was chosen president. His close friend, Van Ness, was also a member. Smith Thompson, afterward a justice of the United States supreme court, was one of the members from Dutchess. Daniel Tompkins was making his first appearance in politics; it is significant, too, that in the final issue he voted with the minority.<sup>3</sup> John V. Henry, the deposed comptroller, and Daniel Hale, the deposed secretary of state, were also members. Josiah Ogden Hoffman, who, it will be recalled, had led his party at the time of the appointment of a federalist council with Governor George Clinton in 1794, was one of the members from Albany. The republicans counted a large majority in the convention, but the debates were not fought out along party lines as a glance at the votes will show.<sup>4</sup> Both parties had within a period of seven years stood for the right of concurrent nomination in the governor and councillors, and

<sup>1</sup> He wrote to the governor saying that his illness rendered his attendance wholly impossible and suggested a number of appointments to be made; October 24, 1801; George Clinton, *Public Papers*, xxvi, 6891.

<sup>2</sup> MS. *Minutes of the Council*, vi, 34, 36.

<sup>3</sup> *Journal of the Convention of 1801*, 34.

<sup>4</sup> Henry and Hale, for instance, voted on opposite sides; *ibid.*, 34.

both were willing to see that interpretation fixed beyond further cavil as a part of the fundamental law of the state.

The result of the labors of the convention so far as the method of appointment was concerned was a promulgation

that by the true construction of the twenty-third article of the Constitution of this state, the right to nominate all officers, other than those who by the Constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the Members of the Council of Appointment.<sup>1</sup>

The wheels and cogs of the political machine which had been in the making since the federalist victory of 1793 were at last adjusted with a nicety which could give no further cause for complaint to the future political engineer. His work would be slight. An ephemeral council of four chosen by a partisan lower house from its partisans in the upper house was given collectively the power to ignore the governor. As the authoritative majority shifted from party to party in the assembly, such a council could not fail to effect whatever changes were demanded in the appointive offices of the state.

Whether or not DeWitt Clinton had any indirect share in the work of the convention, he could scarcely have disapproved of it. His immediate policy was given moral support, but he must have seen that the change meant no increased power or influence for him in the future. He never served again as councillor; but he did serve many years as governor; and, from the point of view of the chief executive robbed of almost all power in the matter of appointments, it is not unlikely that he came to regard his earlier

<sup>1</sup> *Journal of the Convention of 1801*, 52; Poore, *Charters and Constitutions*, ii, 1340.

attitude with more or less regret. There must have been some bitterness of reflection when years later he wrote to his friend General Brown: "There must be no grievances between you and me. The friendship which has long united us shall not be shaken. You well know that in many cases the Governor is a mere cypher in the exercise of the appointing power."<sup>1</sup>

<sup>1</sup>Letter to Major General Brown, June 20, 1818; *DeWitt Clinton Papers*, iv, 143.

## CHAPTER V

### REPUBLICAN FACTIONS IN THE DISTRIBUTION

WHEN the turn of political events at the opening of the nineteenth century swung the republicans into power there were three distinct elements of the party contending for the leadership in New York—the Clintons, the Livingstons and the followers of Aaron Burr. Each of these wings drew its strength from a different source. The popularity of George Clinton with the largest portion of the party had perished during the period of his retirement, and his nephew now came forward in all the vigor and zeal of his young manhood as the organizer of the forces which the governor controlled. The Livingstons relied more upon the collective strength of their large family than upon the influence of any individual member. Aaron Burr's power seems to have lain almost entirely in the fascination of his own personality, which attracted to him a substantial though limited number of devoted followers.

It has already been remarked that the republican victory in New York was due in large measure to the skilful manner in which Burr combined in the electoral ticket these three factions within the party. But the victory, however secured, gave all the power and influence of the government into the hands of the Clintons, and both the Livingstons and the Burrrites so far as political recognition in the state was concerned were placed at the mercy of DeWitt Clinton. The opportunity to



crush his rivals for leadership was as broad as the temptation must have been strong.

In 1788 Chancellor Livingston had been Hamilton's chief support in the New York convention which ratified the constitution. For some reason his services and his talents had been singularly ignored by Washington and the Hamiltonian party. He had expected to be chief justice of the United States,<sup>1</sup> but John Jay had received the appointment. He had expressed longings also for the treasury department,<sup>2</sup> but this went to Hamilton. He appears to have been thought of for postmaster general, but he was not appointed.<sup>3</sup> The Livingstons felt further slighted by the fact that while one of the United States senatorships went to Hamilton's father-in-law, Philip Schuyler, the other instead of coming to them was given to Rufus King, a recent arrival from Massachusetts.<sup>4</sup> It is not remarkable that this apparently studied exclusion of a family which wielded no inconsiderable influence in New York should have estranged them from Hamilton and his followers. The Livingstons went over to the Clinton interests in a body,<sup>5</sup> and Washington's belated offer to the chancellor of the appointment to France<sup>6</sup> was not sufficient to atone for the neglect they had received. In the light of the political situation in New York in 1801 it is curious to note that the first result of the coalition between the Livingstons

<sup>1</sup> Hamilton, *History of the Republic*, iv, 503; Hammond, *op. cit.*, i, 107.

<sup>2</sup> "Chancellor Livingston wishes this department [treasury], but will not succeed." Madison to Jefferson, May 27, 1789; *Writings of James Madison*, v, 371, note.

<sup>3</sup> Hamilton, *op. cit.*, iv, 503, 504.

<sup>4</sup> Lodge, *Life of Hamilton*, 82; Hamilton, *op. cit.*, iv, 504.

<sup>5</sup> Hammond relates on hearsay that this course was determined upon at a family meeting; *op. cit.*, i, 107.

<sup>6</sup> Washington, *Writings* (Ford ed.), xii, 423, note.

and the Clintons in the early nineties was the election of Aaron Burr to the United States Senate.<sup>1</sup> The infant federalist party was then on the rising road to the victory which placed Jay in the Governor's chair in 1795, but the federalists were ultimately weakened in proportion as the republicans were strengthened by the Livingstons' change of party allegiance.

The year 1801 gave the republican party its first real opportunity to recognize the Livingstons, and DeWitt Clinton realized the extent of reward which their services merited. So far as outward appearances were concerned the alliance between the Clinton and the Livingston elements seems to have been complete at that time, although some years later the violence of factional strife within the party again separated them. Brockholst Livingston had been placed upon the New York combination ticket and had been elected to the assembly.<sup>2</sup> Scarcely had the legislature convened in November, 1800 when John Armstrong, a brother-in-law of the chancellor, was chosen United States senator for the few months remaining on the unexpired term of John Lawrence, who had resigned.<sup>3</sup> It now remained for the council of appointment to further the distribution of offices among the other members of the family, and certainly the council carved their share with little parsimony. To Edward Livingston, brother of the chancellor, went, as we have seen, the mayoralty of New York. Thomas Tillot-

<sup>1</sup> "Mr. Burr was this day elected by both houses to succeed General Schuyler, by a large majority in the Senate, and of five in the House of Representatives [Assembly]. This is the fruit of the Chancellor's coalition with the Governor." Tillary to Alexander Hamilton, January 19, 1791; quoted in Hamilton, *op. cit.*, iv, 504.

<sup>2</sup> *Assembly Journal*, xxiv, 3.

<sup>3</sup> *Assembly Journal*, xxiv, 11. He was again appointed at the expiration of the term; *ibid.*, 24.

son, who was appointed secretary of state, was a brother-in-law. And when Robert R. Livingston himself resigned the state chancellorship to accept Jefferson's appointment as minister to France,<sup>1</sup> the opportunity was seized upon to give the family additional preferment. John Lansing being transferred from the office of chief justice to that of chancellor,<sup>2</sup> Morgan Lewis, another brother-in-law, was promoted from associate to chief justice.<sup>3</sup> A few weeks later Brockholst Livingston was given a seat on the supreme bench as was Smith Thompson,<sup>4</sup> still another brother-in-law, who had declined the offer of a district attorneyship.<sup>5</sup> Schuyler Livingston, a distant cousin, was commissioned as one of the auctioneers<sup>6</sup> in New York; while in Dutchess county Gilbert Livingston and Robert Henry Livingston were continued as surrogate and clerk respectively, offices which they had held from a period that antedated the beginnings of parties.<sup>7</sup> Maturin Livingston also was a register in the court of chancery.<sup>8</sup>

But if DeWitt Clinton fostered the influence of the Livingstons by the generous use of the patronage he certainly failed to warm in the same degree toward the adherents of Aaron Burr. The motives which prompted his initial

<sup>1</sup> *Executive Journal of the Senate*, i, 395.

<sup>2</sup> MS. *Minutes of the Council*, vi, 34.     <sup>3</sup> *Ibid.*     <sup>4</sup> *Ibid.*, vi, 49.

<sup>5</sup> *Ibid.*, vi, 34. In the appointment of Brockholst Livingston and Smith Thompson the federalists were evidently disappointed. They saw the failure of their prediction that DeWitt Clinton and Spencer were planning to place themselves on the supreme bench and they ascribed the change of policy, as their opponents expressed it, "to the potency of their scurrilous and vindictive libels;" *Albany Register*, January 19, 1802.

<sup>6</sup> MS. *Minutes of the Council*, vi, 32.

<sup>7</sup> Gilbert Livingston was appointed in 1787; *ibid.*, ii, 85. R. H. Livingston, 1789; *ibid.*, ii, 174. See also *ibid.*, vi, 293.

<sup>8</sup> *Albany Gazette*, September 24, 1801.

attitude of hostility toward Burr are difficult of analysis. It seems generally conceded that his basal motive was his fear of a dangerous rival, although only his acts of hostility and the overwhelming probabilities of the case are cited in support of such a view.

The accusation of Burr's treachery to Jefferson in the presidential election carried to the house of representatives in 1801 was not openly flung until the publication of Cheetham's "View of the Political Conduct of Aaron Burr" in the summer of 1802. It is impossible to say whether Clinton was the "eminent character" referred to in that scurrilous pamphlet as possessing the damning evidence of Burr's perfidy, to prove which he was "willing to appear in a court of justice" but was unwilling to subscribe his name in the publication;<sup>1</sup> indeed it is impossible to say whether that "eminent character" had any existence beyond the confines of Cheetham's riotous imagination. And if Clinton did possess such information it is equally impossible to fix the date at which it came to his knowledge. A few years later Cheetham asserted that "Mr. Burr's defection was scarcely known, certainly not sufficiently to form, in August and September of 1801, a very formidable objection to the appointment of his partizans."<sup>2</sup> But little reliance can be placed upon any assertion coming from Cheetham. Fiction and facts were as one to him when he had a thesis to sustain; and just at this point his thesis exhibited the paradox of showing that, in his attitude toward the adherents of Burr, Clinton had not been guilty of a discrimination which in another connection he very frankly admitted that he had shown.<sup>3</sup> Aside from the possibility that Clinton

<sup>1</sup> *A View of the Political Conduct of Aaron Burr*, 50, 57, 58.

<sup>2</sup> Cheetham, *A Reply to Aristides* (1804), 125.

<sup>3</sup> *Ibid.*, 121.

may have harbored a strong suspicion of the vice-president's treachery to his party there is no cause for surprise that he should have distrusted him. Hamilton from "an intimate and accurate knowledge of character" was willing to stand against the major portion of his own party and urge the election of his arch-enemy Jefferson in preference to Burr;<sup>1</sup> and there is no reason why Clinton should have been more in the dark as to Burr's character than was Hamilton.

At any rate when the council met in August following the presidential election in February, Clinton had probably determined that the friends of Burr were not to be too generously rewarded. Nor did Burr press an over-vigorous suit for them. He was shrewd enough to realize that even a political friendship between him and a man of DeWitt Clinton's temperament would always rest upon a foundation of sand. His services to the party gave him the right to be considered; but there was prudence in maintaining a distance. Three weeks before the meeting of the council he indicted a studiedly cautious letter to Governor Clinton upon the subject:

I have not taken the liberty to recommend to you any person for any office; unless indeed you should consider as such, the wish which I expressed that Doctor Browne might be transferred from the place to which he was destined by the unanimous recommendation of the City Members, to one where I thought his talents more requisite; and I am not now about to depart from the rule which I have prescribed to myself on this

<sup>1</sup>"I speak with an intimate and accurate knowledge of character. His elevation can only promote the purposes of the desperate and the profligate. If there be a man in the world I ought to hate, it is Jefferson. With Burr I have always been personally well. But the public good must be paramount to every private consideration." Hamilton to Gouverneur Morris; Hamilton, *Works*, viii; 573.

subject; yet a few hints by way of information may not be unacceptable and cannot add to your perplexities.

The family of Bartow is numerous and respectable, residing principally in the County of West Chester—Several of them have at all times been with us—most, if not all, were so at the last election—Anthony and Rob<sup>t</sup>. S. Bartow Vendue Masters in this City are young men of industry and fair characters—The Widow & children of Doctor Wright, who served faithfully in our army, derive their principal support from these Young Men—At the late election they were very active in the support of our ticket—

Beverly Robinson is Grandson of Col. Robinson *well known to you*—He has settled in this City as a Lawyer—is said to have respectable talents and is undoubtedly of good private character—He is somehow, in what way I know not, connected with John Watts who expressed to me some Solicitude that he might be made a notary—I have no personal acquaintance with M<sup>r</sup>. B. R—

Capt<sup>n</sup> John Stanford was last Winter recommended by the City Delegation for Health Com<sup>r</sup> & John Stagg for Sheriff—They were both very valuable officers in Malcom's Reg<sup>t</sup>. & are in my opinion well qualified for their respective offices—I mention their names lest in the multiplicity of business they might escape your recollection—

I cannot recollect that Judge Van Ness or any one of his family has even had any office of profit—His Sons John & W<sup>m</sup> are intelligent, active & useful Young Men—How far any gratification to them might be just & politic, is submitted to your Consideration—<sup>1</sup>

To this letter was appended a postscript, "My near Connection with M<sup>r</sup>. Prevost, renders it improper that I should say anything respecting him."

Of these applicants whose names Burr put forward with

<sup>1</sup> Aaron Burr to George Clinton, July 22, 1801; George Clinton, *Public Papers*, xxvi, 6858.

all the delicate finesse that was so largely a part of his character, it will be recalled that Stagg and Prevost were both appointed, the one to the office of sheriff of New York, the other to that of recorder. Prevost was Burr's step-son,<sup>1</sup> and Anthony Bartow, who was at Burr's request recommissioned auctioneer,<sup>2</sup> was also a connection of his wife's family. William P. Van Ness, perhaps the most ardent of Burr's admirers and subsequently his public defender,<sup>3</sup> was appointed a public notary,<sup>4</sup> an office at that time of some distinction. But the three other names suggested by Burr failed to receive recognition.<sup>5</sup> The omission of Robinson from the list of notaries was scarcely in the nature of a slight to Burr, since he admitted that he was unacquainted with him. It may be mentioned, too, that John T. Irving, who was appointed a notary,<sup>6</sup> was reckoned in the Burr element of the party.<sup>7</sup>

With the exception of this single letter to Governor Clinton, Burr seems consistently to have followed out his determination not to recommend candidates to office. No letters from him are found among the papers in the council files and his name was appended to none of the innumerable petitions which flooded in upon the council. The names of his close associates, however, Swartwout and Gelston, were in many cases signed to these petitions; and in a number of instances candidates stood for appointment avowedly under the patronage of the vice-president. Abraham Bancker, an

<sup>1</sup> *New York Genealogical and Biographical Record*, xiii, 28.

<sup>2</sup> MS. *Minutes of the Council*, vi, 32.

<sup>3</sup> Aristides, the author of *An Examination of Charges against Aaron Burr*, was in reality Van Ness.

<sup>4</sup> MS. *Minutes of the Council*, vi, 30.

<sup>5</sup> *Ibid.*, vi, 21, 104.

<sup>6</sup> *Ibid.*, vi, 38.

<sup>7</sup> Cheetham, *A Reply to Aristides*, 125. John T. Irving was the younger brother of Dr. Peter Irving, editor of the Burr paper, *The Morning Chronicle*.

applicant for the office of surrogate of New York, is a case in illustration. Writing to the council in July, 1801, he said:

Col: Rutgers, Col: Burr, and several other respectable Gentlemen, whose acquaintance and friendship I have the honor to possess, actuated by motives of Benevolence toward me, thought proper at the last Session of the Legislature, to propose me to the honorable, the Council, as a proper Character to fill the Station of a Master in Chancery for the State of New York; but the disagreement in opinion, which immediately thereafter prevailed between the Governor and the Council operated injuriously to my interest, and entirely frustrated their expectation—

Conceiving the above mentioned impediment to be effectually removed, by the restoration of Harmony, proceeding from Union of Sentiment and Principle, I can now with Confidence, step forward as an Applicant for the said Office under the patronage of the above named Gentlemen, and with the Approbation of many others, whose recommendation in writing, I might, with facility, have obtained, had I supposed it necessary.

I must observe, however, that if the Commission of Surrogate of the City and County of New York (at present vacant by the preferment of David Gelston Esquire to be Collector of the Customs for this Port) has not already been disposed of, it would be a singular gratification to me, to be appointed his successor, instead of a Master in Chancery as I am well acquainted with the duties of the said Office, having acted in that Capacity for several years, in the county of Richmond . . . .<sup>1</sup>

Bancker not only failed in his request for the office of surrogate but even the lesser appointment of master in chancery was denied him.

<sup>1</sup>Abraham Bancker to the Council, July 20, 1801; *Civil Files of the Council*.



In addition to the Bartow brothers other friends of Burr sought appointments to the lucrative office of auctioneer, of which, as has been noted, there were twenty-four in New York City. Moses Lopez wrote to Governor Clinton:

By the advice of my particular friends has emboldened me to address your Excellency Soliciting your Recommendation of me to the Honorable Council of Appointment as an Auctioneer of this City.—

I must apologize addressing your Excellency not being particularly known to you—

I beg leave to Refer your Excellency to my particular friend Col. Burr for an account of my character, which you will Receive from him—with Esteem I Remain etc.<sup>1</sup>

Lopez was not appointed,<sup>2</sup> but David Dunham, who was supported by David Gelston and John Swartwout, was more fortunate.<sup>3</sup> Gelston wrote that Dunham was “industrious and zealous in the cause of republicanism, imminently so at our late elections.”<sup>4</sup> And John Swartwout commended him “as an Active and Zealous friend to the Republican Cause,” and he added, “I am convinced that his Influence and exertions will always be felt.”<sup>5</sup> If the uncertain evidence of Cheetham’s assertion is to be credited, and here the probabilities are in favor of its partial truth at least, there were numerous other friends of Burr who sought for a share in the distribution of the patronage. In endeavor-

<sup>1</sup> June 29, 1801; *Civil Files of the Council*.

<sup>2</sup> MS. *Minutes of the Council*, vi, 32.

<sup>3</sup> *Ibid.*

<sup>4</sup> David Gelston to the Council, July 17, 1801; *Civil Files of the Council*. See also letter from Elias Nixsen to the Council, July 17, 1801; *ibid.*

<sup>5</sup> John Swartwout to Governor Clinton, July 22, 1801; *Civil Files of the Council*.

ing to show that the animosity of Burr's friends toward Clinton resulted from self-interest he wrote:

Thomas Smith, Clerk in Chancery, who solicited the office of Recorder of this city; John P. Van Ness, who aspired to the office of Secretary of the State; James Scott Smith, who wished to be appointed Master in Chancery; Dr. James Smith, who applied for the office of Resident Physician; Timothy Greene, for that of Surrogate; Dr. Brown, for that of Health Physician; Ezekiel Robbins, who wished for *several* offices, and others, all staunch friends of Mr. Burr, were disappointed.<sup>1</sup>

Burr, as we have seen, had personally recommended at least two of these. But over against the assertion that the Clintons had discriminated against Thomas Smith who sought to be made recorder stands the appointment to that office of John B. Prevost, Burr's step-son. Moreover, when Smith, fearing that he would be deprived of his clerkship in chancery, sought the influence of George Clinton with the chancellor, who controlled the appointment, the governor made a special visit to Lansing in his behalf and immediately wrote Smith an assurance of his being retained.<sup>2</sup>

The strength of Burr's influence lay in New York City.<sup>3</sup> Even his most violent traducer reluctantly admitted that he had exerted himself in favor of the republican cause in the election of 1800,<sup>4</sup> when it might almost be said that the republican triumph in that city assured the victory of the party in the choice of president. And when the council

<sup>1</sup>Cheetham, *A Reply to Aristides*, 121.

<sup>2</sup>T. Smith to G. Clinton, November 27, 1801; G. Clinton to T. Smith, November 30, 1801; George Clinton, *Public Papers*, xxvi, 6918a, 6918b.

<sup>3</sup>Hammond, *op. cit.*, i, 172.

<sup>4</sup>Warren (Cheetham), *A View of the Political Conduct of Aaron Burr*, 38.

came to parcel out the patronage within the city it is perhaps undeniable that the giant's share went to DeWitt Clinton's friends, not to Burr's. Richard Riker,<sup>1</sup> Tunis Wortman, Sylvanus Miller are all names which figured prominently in the so-called Clintonian faction;<sup>2</sup> while Edward Livingston, the mayor, was the friend of both, or neither.<sup>3</sup> But the instances, which have been cited at perhaps too great length, in which Burr's friends and family connections met with favors in the gift of the Clintons certainly go far toward destroying the common notion that the Burrites were rigidly and unexceptionally excluded from office.<sup>4</sup> The list of such appointments is perhaps not long, but the complete list is also perhaps inaccessible.

In still another phase of his policy has DeWitt Clinton been accused without fairness. It has been frequently insinuated, with a singular disregard for the facts of the case, that he divided the offices of the state and city between the members of his own family and the Livingstons.<sup>5</sup> As a matter of truth, in no single instance was a member of the Clinton family appointed to office in 1801. The family was not large, but some of its members were eligible for appointment, had DeWitt Clinton desired to favor them. The Albany Gazette of September twenty-fourth, in a caustic comment upon the accusation that the federalists had placed all power in the hands of a few, remarked:

<sup>1</sup>R. Riker to George Clinton, October 27, 1801; George Clinton, *Public Papers*, xxvi, 6893.

<sup>2</sup>Wood, *A Full Exposition of the Clintonian Faction*, 10, 13, 15, 18, etc.

<sup>3</sup>Cheetham, *A Reply to Aristides*, 124.

<sup>4</sup>Hammond, *op. cit.*, i, 180; Alexander, *A Political History of New York*, i, 119.

<sup>5</sup>Hammond, *op. cit.*, i, 173; Adams, *History of the United States*, i, 234; Alexander, *op. cit.*, i, 116; Roosevelt, *New York*, 162.

The NEW order of things shows the Democrats of *juster* ideas, and more caution in the distribution of power and profit. These liberty and *equality* gentry have placed all the power, honors and profits of the state in the hands of two families to keep them out of the reach of the aristocrats. The following specification will show the justness of the remark.

And a list of offices held by the Clintons and Livingstons is appended: George Clinton, governor; James Clinton, his brother, a delegate to the constitutional convention; DeWitt Clinton, his nephew, a senator and a councillor; Charles Clinton, another nephew, a member of the assembly; George Clinton, junior, a third nephew, a delegate to the convention. "These," the communication adds, "include the whole family, except a young man, yet a clerk. . . *Down with the well-born & huzza for equality.*" It is significant that every office mentioned was elective, not appointive. That Clinton's friends and supporters were generously favored in the apportionment is unquestionable, but the charge of nepotism appears to have as little foundation as the assertion that he adopted a policy of total exclusion toward the adherents of Aaron Burr.

## CHAPTER VI

### JEFFERSON AND THE NEW YORK PATRONAGE

IN the distribution of the federal patronage in New York Jefferson seems to have been guided by much the same policy of friendliness toward the Livingstons as that which Clinton adopted. Almost immediately after his election he wrote to Robert R. Livingston offering him the mission to France,<sup>1</sup> and the offer was accepted,<sup>2</sup> although two months before, the chancellor had apparently declined a tentative offer of the department of the navy.<sup>3</sup> Soon after Jefferson's entrance upon office Colonel Burr in conjunction with the republican members of the senate and the house of representatives from New York made out a "slate" of the changes desired in that state and turned it over to Jefferson.<sup>4</sup> David Gelston was recommended for the office of

<sup>1</sup> Jefferson to R. R. Livingston, Feb. 24, 1801; Jefferson, *Writings* (Ford ed.), vii, 499. Hammond thinks that this offer was due to the aid and influence of Governor Clinton, but he offers nothing to substantiate the inference; *op. cit.*, i, 180. Jefferson knew the chancellor well and had been in more or less active correspondence with him since 1782; *Correspondence of Jefferson*, Library of Congress, Series 1, i, 101, 107, 109, 110; iv, 99, 145, 388; vii, 281, 339, 358; Series 2, xlix, 5, 6, 102, 103, 103a, 104; lii, 76, 99.

<sup>2</sup> R. R. Livingston to Jefferson, March 12, 1801; *ibid.*, Series 2, lii, 77.

<sup>3</sup> Jefferson to R. R. Livingston, December 14, 1800; Jefferson, *Writings* (Ford ed.), vii, 462-466.

<sup>4</sup> The original paper in the handwriting of Burr and endorsed by Jefferson is among the papers in the archives of the Department of State, quoted in *American Historical Review*, iii, 290.

collector of the port, John Swartwout for that of Marshall, Theodorus Bailey for supervisor and inspector, Mathew L. Davis for naval officer and Edward Livingston for district attorney.<sup>1</sup> All of these, perhaps including Livingston, were of Burr's immediate supporters. Edward Livingston was appointed,<sup>2</sup> and so was John Swartwout.<sup>3</sup> Then Jefferson wrote to George Clinton:

Disposed myself to make as few changes in office as possible, to endeavor to restore harmony by avoiding everything harsh, and to remove only for malconduct, I have nevertheless been persuaded that circumstances in your state, and still more in the neighboring states on both sides, require something more. It is represented that the Collector, Naval officer, & Supervisor ought all to be removed for the violence of their characters & conduct. The following arrangement was agreed on by Colo. Burr & some of your Senators & representatives. David Gelston, collector, Theodorus Bailey, Naval officer, & M. L. Davis, Supervisor. Yet all did not agree in all the particulars, & I have since received letters expressly stating that Mr. Bailey has not readiness and habit enough of business for the office of Naval officer, & some suggestions that Mr. Davis's standing in society, & other circumstances will render his not a respectable appointment to the important office of Supervisor. Unacquainted myself with these & the other characters in the state which might be proper for these offices, & forced to decide on the opinions of others, there is no one whose opinion would command with me greater respect than yours, if you would be so good as to advise me, which of these characters & what others would be fittest for these offices.<sup>4</sup>

<sup>1</sup> *American Historical Review*, iii, 290.

<sup>2</sup> Hunt, *Life of Edward Livingston*, 90.

<sup>3</sup> *Executive Journal of the Senate*, i, 403.

<sup>4</sup> Jefferson to George Clinton, May 17, 1801; Jefferson, *Writings* (Ford ed.), viii, 52, 53. Jefferson reversed the offices sought by Bailey and Davis. The latter was an applicant for the naval office.

Jefferson probably felt that with the Clintons holding the reins of government in New York it was no less unjust than impolitic to permit Burr to dictate the settling of the whole federal patronage in the state upon his own political supporters. And his feeling was shared by members of the Clintonian wing of the party, for almost at the same time Thomas Tillotson, himself a candidate for the office<sup>1</sup> which went to Burr's friend, Gelston, asked the governor:

Could you not in some collateral way give either M<sup>r</sup> Madison or M<sup>r</sup> Gallatin a hint of the probable effect on M<sup>r</sup> Jefferson's administration [of] the Idea that the appointments have and will be made under the influence of a certain Gentleman of this City? Or could you write me on the subject authorizing me to say something on this point? If you suppose any public good would result from such a measure you may safely confide any communication you may think proper to my honor.<sup>2</sup>

It is impossible that Governor Clinton could have ignored these appeals for an expression of opinion on the subject of the New York appointments, but it does not appear what his reply to the president's inquiry was. The subsequent turn of events indicates that he recommended to Jefferson those of his own following. Gelston, it is true, was appointed to the Collectorship<sup>3</sup> which Tillotson sought, but Bailey withdrew from his candidacy for supervisor, and Samuel Osgood,<sup>4</sup> DeWitt Clinton's step father-in-law, was appointed to that office. Mr. Henry Adams says that Bailey was supposed at the time to have been given the assurance of the

<sup>1</sup> Thomas Tillotson to George Clinton, April 8, 1801; George Clinton, *Public Papers*, xxvi, 6826.

<sup>2</sup> Thomas Tillotson to G. Clinton, May 21, 1801; George Clinton, *Public Papers*, xxvi, 6836.

<sup>3</sup> *Executive Journal of the Senate*, i, 403.

<sup>4</sup> *Ibid.*

postmastership of New York,<sup>1</sup> a position to which he was subsequently appointed. If this is the case it is probable that the Clintons had nothing to do with it, for early in 1804 Bailey wrote to George Clinton telling him of his appointment and explaining his reasons for being willing to resign his seat in the senate to accept a humbler berth.<sup>2</sup> Shortly after his withdrawal, however, Bailey did desert the ranks of the vice-president and join the Clintons.<sup>3</sup>

Burr soon came to realize that Jefferson had called a sudden halt upon extending his patronage to at least one of his candidates. This was Mathew L. Davis; and it was Davis who fought to the bitter end for the appointment he had been led to expect would be given him.<sup>4</sup> Gallatin, Jefferson's secretary of the treasury, supported him warmly,<sup>5</sup> although he disapproved in the main of anything like an extensive policy of removal.<sup>6</sup> But Gallatin was more than likely influenced to a great degree by his father-in-law, Commodore Nicholson, who was friendly to the Burr interests.<sup>7</sup> Nicholson, however, having appealed to the Clintons for their support with Jefferson in his application to be commissioner of loans in New York, and hav-

<sup>1</sup> Adams, *History of the United States*, i, 231.

<sup>2</sup> George Clinton, *Public Papers*, xxviii, 7265.

<sup>3</sup> T. Bailey to G. Clinton, Feb. 3, 1802; the same to same Feb. 28, 1802; *ibid.*, xxvi, 6952, 6969.

<sup>4</sup> "The reason he gives for his [Davis's] anxiety is that, immediately after the adjournment of Congress, E. Livingston and others mentioned to him that a positive arrangement was made by the Administration by which he was to be appointed to that office;" Gallatin to Jefferson, September 12, 1801; Gallatin, *Writings*, i, 47.

<sup>5</sup> Gallatin to Jefferson, September 12, 14, 1801; *ibid.*, i, 47, 48; 50-53.

<sup>6</sup> Gallatin to Jefferson, July 25, 1801, August 10, 1801; *ibid.*, i, 28, 29; 32, 33.

<sup>7</sup> Nicholson to Gallatin, August 10, 1801; Adams, *Life of Gallatin*, 282.



ing secured both the support <sup>1</sup> and the appointment,<sup>2</sup> ceased to exert himself in behalf of Burr's friend. Davis sought also to enlist DeWitt Clinton in behalf of his application for Jefferson's favor, but on September 4, 1801 Clinton wrote from Newtown:

I owe you an apology for not writing to you before agreeably to promise: It entirely escaped my recollection until yesterday.

However willing I might be to advance your views in general, yet in the case of recommendation to the Executive for office, I think it the duty of every friend of the administration to act with as much caution as if he were under the most sacred obligations. Time may possibly remove the impediments which upon more mature reflection have presented themselves to my mind in addition to the one I suggested: If this should ever prove the case it will afford me the highest satisfaction to see your wishes gratified.<sup>3</sup>

Clinton's refusal to recommend did not dampen the ardor of Burr for Davis nor of Davis for himself. Burr had already complained to Gallatin of "secret machinations against Davis,"<sup>4</sup> but he continued to address the president in his behalf. Jefferson would have none of it. He had in all probability decided not to make the appointment be-

<sup>1</sup> George Clinton to Jefferson, October 13, 1801; George Clinton, *Public Papers*, xxvi, 6883. The letter is a rough first draft and a line is drawn through the words, "Mr. DeWitt Clinton has lately addressed a letter to you in his Favor." The letter reads in part: "James Nicholson Esquire of the City of New York informs me that Genl Clarkson intends to resign the Place of Loan Officer and that under this Impression he has offered himself as a candidate for it and has solicited me to communicate to you the Opinion (of) I entertain of him. . ."

<sup>2</sup> *Executive Journal of the Senate*, i, 401.

<sup>3</sup> DeWitt Clinton to Mathew L. Davis, September 4, 1801; *DeWitt Clinton Papers*, ii, 66.

<sup>4</sup> Burr to Gallatin, June 28, 1801; Adams, *Life of Gallatin*, 283.

fore Davis sought him out to press his claim at the president's Virginia home, and he was not even moved to relent by Gallatin's assertion that "there is hardly a man who meddles with politics in New York who does not believe that Davis's rejection is owing to Burr's recommendation."<sup>1</sup> To Burr he wrote on November eighteenth:

Your favour of the 10th has been received, as have been those of September 4th and 23d, in due time. These letters, all relating to office, fall within the general rule which even the very first week of my being engaged in the administration obliged me to establish, to wit, that of not answering letters on office specifically, but leaving the answer to be found in what is done or not done on them. You will readily conceive into what scrapes one would get by saying *no*, either with or without reasons; by using a softer language, which might excite false hopes, or by saying *yes* prematurely; and, to take away all offence from this silent answer, it is necessary to adhere to it in every case rigidly, as well with bosom friends as with strangers.<sup>2</sup>

Davis was not appointed; neither was Comptroller Jenkins, whom DeWitt Clinton seems to have put forward for the office later on.<sup>3</sup> Rogers, the reputed revolutionary tory,<sup>4</sup> remained at the post of naval officer.

It has been stated by Mr. Henry Adams, largely on the basis of the Davis episode, that a collusion existed in 1801 between Jefferson and DeWitt Clinton to drive Burr from the republican party,<sup>5</sup> and he asserts that it was the remonstrance of DeWitt Clinton against the Burr "slate" which

<sup>1</sup> Gallatin, *Writings*, i, 53.

<sup>2</sup> Jefferson to Burr, November 18, 1801; Davis, *Memoirs of Burr*, ii, 158, 159; Jefferson, *Writings* (Ford ed.), viii, 102.

<sup>3</sup> Gallatin, *Writings*, i, 104.

<sup>4</sup> *Ibid.*, i, 48.

<sup>5</sup> Adams, *History of the United States*, i, 231-236.

drew from Jefferson the letter to Governor Clinton asking about Gelston, Bailey and Davis.<sup>1</sup> What form that remonstrance took does not appear. Congress had adjourned on the fifth of March;<sup>2</sup> it could not have been made, therefore, through any of the republican congressmen who had assisted in drawing up the list of proposed appointments. From the correspondence of the period which has survived there is no indication that any direct communication was exchanged between Jefferson and Clinton on the subject.<sup>3</sup> That DeWitt Clinton had determined to use the power in his hands to prevent any conspicuous advancement of the Burr element of his party is perhaps true enough; and that Jefferson in his persistent refusal to appoint Davis to office was contributing to the same end may also be undeniable. But that there had passed between them a secret and definite understanding on the subject seems, to say the least, open to reasonable doubt. In the strong light of the persecution which followed Burr during the next few years, it is easy to read into the events of 1801 a deeper significance and a more recondite meaning than was put into them by any of the principals concerned. Had such a union of attack existed between the president and the younger Clinton in 1801 it is hardly probable that when the latter left New York for Washington less than a year later Governor Clinton would have felt it necessary to write the president:

<sup>1</sup> Adams, *History of the United States*, i, 231.

<sup>2</sup> *Executive Journal of the Senate*, i, 396.

<sup>3</sup> In the writings of Jefferson (Ford and Washington editions), the Correspondence of Jefferson (Library of Congress), the Correspondence of Jefferson, (Coolidge Collection, Mass. Historical Society), the DeWitt Clinton Papers (Columbia University Library), no letter is found bearing a date earlier than 1802. If Mr. Adams had any other source of information he does not cite it.

My Nephew, Mr. DeWitt Clinton, will have the honor of delivering you this letter. Permit me to recommend him to your friendly notice. He was this day appointed a senator from this state in the Congress of the United States, in the room of Mr. Armstrong, who had recently resigned his seat in that body, and will immediately start for the seat of Government. It is reasonable to conclude that I feel partiality for him, as well from the consanguinity that exists between us, as from his having, at an early period of life, been of my family, in the confidential capacity of my private secretary. But I can with great truth, assure you that these considerations have no influence upon me in giving you his character. His present appointment, (which was from a large majority) as well as different elective advantages he had previously filled, afford good evidence of his possessing the confidence of his fellow citizens. His political principles are pure, and he has too much dignity ever to deviate from them; nor will you find him destitute of talents and information.<sup>1</sup>

Five candidates were recommended to Jefferson by the vice-president. One of them, a Livingston reckoned among the friends of Burr,<sup>2</sup> was appointed; two of the remaining four were placed in the offices they sought; a fourth defected from Burr and relinquished his candidacy; while one was at least negatively refused. Only one of these offices was filled by a Clintonian. When these facts are joined to that of DeWitt's Clinton's having no personal acquaintance with the president and to the probability that no line of correspondence passed between them on the subject, the charge of a dire conspiracy between them to accomplish the ruin of the vice-president is robbed of much of its color.

Jefferson's general policy in distributing the national pa-

<sup>1</sup>George Clinton to Jefferson, February 9, 1802; *Correspondence of Thomas Jefferson*, Library of Congress, Series 2, xvii, 61.

<sup>2</sup>George Clinton, *Public Papers*, xxvii, 7052; Cheetham, *A Reply to Aristides*, 124, 125.

tronage has been the subject of investigation by more than one historian. We are concerned with it here only as it throws light upon the movement of events in New York during the summer of 1801 under the the guidance of DeWitt Clinton. How far Clinton may have been influenced in laying his plans by the policy which Jefferson was pursuing at that time it is difficult to say. Jefferson had come to the presidency while the controversy between Jay and Clinton was being fought out in the New York legislature. His attitude toward the federalist office holders had begun to receive expression, therefore, before any removals had taken place in New York. Prompted by a desire to win over to himself and his party a large element of the defeated federalists he was moving with caution during the first few months of his administration. In a letter to Monroe written soon after his inauguration he said:

Deprivations of office, if made on the ground of political principles alone, would revolt our new converts, and give a body to leaders who now stand alone. Some, I know, must be made. They must be as few as possible, done gradually, and bottomed on some malversion or inherent disqualification. Where we shall draw the line between retaining all & none, is not yet settled, and will not be till we get our administration together.<sup>1</sup>

And in the following summer he wrote to Gallatin:

While we push the patience of our friends to the utmost it will bear, in order that we may gather into the same fold all the Republican Federalists possible, we must not, even for this object, absolutely revolt our tried friends. It would be a poor manoeuvre to exchange them for new converts.<sup>2</sup>

<sup>1</sup> March 7, 1801; Jefferson, *Writings* (Ford ed.), viii, 10.

<sup>2</sup> August 14, 1801; Gallatin, *Writings*, i, 37.

As a matter of fact no considerable number of removals had been made by Jefferson before the August meeting of the council of appointment.<sup>1</sup> The proscription had, however, started and a more general proscription had been publicly hinted at by Jefferson.<sup>2</sup> It is almost certain that Clinton had received no direct communication from him on the subject, but Jefferson's well known reply to the remonstrance of the New Haven federalists at one of his removals<sup>3</sup> had been published throughout the country by the press of both parties. It had been printed in the Albany papers toward the end of July. Clinton had, therefore, read:

When it is considered that during the late administration those who were not of a particular sect of politics were excluded from all office: when by a steady pursuit of this measure, nearly the whole offices of the United States were monopolized by that sect; when the public sentiment at length declared itself, and burst open the doors of honor and confidence to those whose opinions they more approved; was it to be imagined that this monopoly of office was still to be continued in the hands of the minority? Does it violate their *equal rights* to assert some rights in the majority also? Is it *political intolerance* to claim a proportionate share in the direction of the public affairs? . . . If a due participation of office is a matter of right, how are vacancies to be obtained? Those

<sup>1</sup> *Albany Gazette*, August 27, 1801.

<sup>2</sup> July 12, 1801; Jefferson, *Writings* (Ford ed.), viii, 69, 70.

<sup>3</sup> Elizur Goodrich had been appointed by Adams to the collectorship of New Haven a few days before the expiration of his presidency (*Executive Journal*, i, 382). Jefferson chose not to handle these late appointments with much consideration (Jefferson, *Writings* (Washington ed.), iv, 381, 383; (Ford ed.), viii, 44, 45). Samuel Bishop was, therefore, appointed in Goodrich's place (*Executive Journal*, i, 402) and the New Haven federalists made a formal protest (*Albany Register*, July 31, 1801; *American Historical Review*, iii, 277).

by death are few; by resignation none. Can any other mode than by removal be proposed? <sup>1</sup>

Clinton's idea of equalizing the lesser and more numerous appointments between the parties may have been adopted from Jefferson's suggestion of a "proportional share." It is highly probable, however, that the policy pursued in the distribution of the New York patronage had been developed quite independently of the national policy of Jefferson and that, in many instances at least, prospective appointees had been given definite assurance of their appointment. In a letter to George Clinton written as early as February 25, 1801, the writer urges him to use his influence with his nephew and the other councillors to prevent Mr. Kirby's being dropped from the list of New York auctioneers, and he adds that Kirby "is now informed that certain persons in the City are preparing stores, under the avowed intention of doing business as Auctioneers &, presuming that they cannot obtain Commissions unless by the sacrifice of some of those who are now Commissioned, Mr. Kirby is fearful that he may be of the number." <sup>2</sup> It is certain, too, that this premature preparation of the auctioneers of New York was not exceptional, for George Clinton in a letter to Daniel McCormick, junior, bases his apology for not having secured him an appointment upon the fact that the council had determined upon most of their appointments before they came together in August. "As the business for which the Council were now convened," he wrote, "had been before them & ought to have been completed last Winter it may be presumed

<sup>1</sup> Jefferson, *Writings* (Ford ed.), viii, 69-70; *Albany Register*, July 31, 1801; *Albany Gazette*, July 30, 1801.

<sup>2</sup> Whitehead Cornell to George Clinton, Feb. 25, 1801; *Civil Files of the Council*.

the Members had made up their Minds upon the Subject and this will Account for the failure of recent Applications at least." <sup>1</sup>

On the twenty-ninth of January, 1802 the famous council, having reached the limit of its constitutional life, brought its labors to a close. Scarcely had its dissolution taken place when John Armstrong resigned his seat in the United States senate, assigning as the reason for his retirement the illness of himself and his wife.<sup>2</sup> So nearly even was the division of parties in the senate that Armstrong's absence during the debate on the repeal of Adams's judiciary bill had seriously jeopardized the fate of the measure. On the first rumor of Armstrong's resignation Dr. Samuel Mitchill, then a member of congress, wrote to Governor Clinton urging prompt action in the appointment of his successor. Mr. W. C. Nicholas of Virginia, he said, had expressed anxiety on the occasion. The republicans were desirous of collecting their full strength.<sup>3</sup> It was in this extremity that DeWitt Clinton was elected to the vacancy in the senate and was started off for Washington in some haste for those days. Six days before his election by the legislature, the favorite scheme of the administration at Washington had passed the senate by a majority of one.<sup>4</sup>

In the United States senate Clinton was the colleague of Gouverneur Morris, the federalist senator for New York, who by reason of the long senatorial term had like many

<sup>1</sup> August 30, 1801; George Clinton, *Public Papers*, xxvi, 6870.

<sup>2</sup> *Albany Register*, February 12, 1802.

<sup>3</sup> Samuel Mitchill to George Clinton, January 24, 1802; George Clinton, *Public Papers*, xxvi, 6944.

<sup>4</sup> Theodorus Bailey to George Clinton, February 3, 1802; *ibid.*, xxvi, 6952. The news of the passage of the bill was published in the *Albany Gazette*, February 15, *Albany Register*, February 16, 1802.



others survived the transition of parties. The contrast between the veteran statesman of the revolution and the aspirant of a newer generation was as striking as it must have been trying. Yet Clinton's short-lived career in the upper house of the legislature was not without promise. His share in the debate over the Louisiana situation seems to have been the most conspicuous of his achievements. Senator Ross of Pennsylvania had introduced resolutions for the forceful seizure of an opening to the mouth of the Mississippi. Clinton opposed him. One of the senators present described him on this occasion:

Clinton, without that fluency of speech so common as to be almost an indigenous American facility, and probably for that reason instead of one of those unprepared and almost unpremeditated ejaculations often uttered by members of Congress without effort and with as little effect, methodically took his part in this debate by an elaborate oration, leaving, as he disdainfully premised, Mr. Ross and Mr. White in undisturbed possession of what he called their inflammatory appeals and declamatory effusions.<sup>1</sup>

But the senate was not at that time regarded as a place of great distinction and large influence. It was very much overshadowed by the importance of the lower house.<sup>2</sup> Resignations of members to accept various state offices were by no means uncommon. And Clinton soon came to realize that both his personal interest and that of his party pointed to his return to New York as the leader and organizer of the forces which party contentions were scattering rather than drawing together. In August, 1803 Edward Livingston resigned the office of mayor of New

<sup>1</sup> Ingersoll, *Recollections*, 450.

<sup>2</sup> Adams, *History of the United States*, i, 266.

York<sup>1</sup> owing to a considerable defalcation in his accounts as district attorney of the United States.<sup>2</sup> The opportunity for Clinton's restoration to the party in New York was at hand. Almost immediately the Clintonians began to clamor for his appointment to the vacancy.<sup>3</sup> Tunis Wortman wrote to Governor Clinton:

I have the pleasure of assuring your Excellency that among the Republicans here there exists a perfect uniformity of opinion. There is but one voice among those that can be considered as faithful to our cause. From the intercourse I have had with them I can venture to state with perfect confidence, that it is their general wish that M<sup>r</sup>. DeWitt Clinton should be appointed to that office, and that they consider that appointment as essential to the preservation of Republican interest in this place.<sup>4</sup>

The governor seems at first not to have thought of him for the appointment. On the third of September he wrote asking his advice on the New York situation. The following arrangement was spoken of, the present mayor to be governor of New Orleans, the chief justice to be mayor, Mr. Kent to be chief justice, Mr. Spencer a judge and Mr. Woodworth the attorney general. He feared the arrangement would be pernicious. Would DeWitt Clinton express his "Opinion on the delicate & interesting Subject?"<sup>5</sup>

Some speculation has been indulged in as to the motives

<sup>1</sup> George Clinton to Edward Livingston, August 29, 1803; George Clinton, *Public Papers*, xxvii, 7162.

<sup>2</sup> Hunt, *Life of Edward Livingston*, 101, 102.

<sup>3</sup> John Broome and other members of the assembly from New York to George Clinton, September 6, 1803; William Edgar to the Council, September 9, 1803; George Clinton, *Public Papers*, xxvii, 7172, 7174.

<sup>4</sup> T. Wortman to George Clinton, September 10, 1803; *ibid.*, xxvii, 7175.

<sup>5</sup> G. Clinton to DeW. Clinton, September 3, 1801; *ibid.*, xxvii, 7168.

which prompted Clinton to abandon the senate of the United States for the mayoralty of New York. In his reply to the governor's request for his opinion there is no uncertainty about his desire to make the change, and his reasons are clearly set forth. The letter is long, but it is perhaps worthy of analysis and comment. He opens the subject by charging a collusion between "A. S." (Ambrose Spencer) and "M. L.—s." (Morgan Lewis). "The darling object of the one is a seat on the bench and the ruling passion of the other avarice & inordinate vanity." Secret seeds of disaffection are plentifully sown. An explosion will soon take place. He continues:

It will be the height of ill policy to reinforce such men with office—They are already more than amply provided for—more than their influence entitles them to—and to continue going on is belittling the republican party in the neighboring states.

It is high time to stop and say to these people—Thus far have we gone and we will go no farther—Their thirst for office is insatiable—Their pretensions exorbitant—They seem to consider the republican party as a patrimony from which they are to derive their support.

He enters at some length into the various reasons why Chief Justice Lewis, a member of the much favored Livingston family, should not receive additional honors. He cites the importance of the next election in New York as it respects the general cause and asserts that Lewis's appointment will virtually sacrifice it. "He will court the federalists—He will court Burr—He will court every interest but the real republican one—He will give himself up to the direction of a little family Junto.—" And having read Lewis out of possibility, he adds:

Various other candidates have been suggested, the present

Recorder [John B. Prevost], B. Livingston, J. Broome & Mr. Osgood—They have all waived their pretensions in my favor. I enclose you B. L's letter to me—and you will learn from other sources the opinions of the others.—

You will of course be glad to know my views & sentiments on the occasion—Delicacy would have forbid this communication, had it not been for your friendly & to me flattering enquiries—I shall speak to you with the sincerity & candor to which you are entitled from me.—

I have a young & growing family to which I am tenderly attached and which require my constant attendance & care—An absence of six months is insupportable—I cannot therefore think of retaining my present situation beyond the next session—Add to this, that altho' my property is large, yet I have already sacrificed too much to public considerations—that the expence of three establishments, one here [Newtown]—one in Washington and one in New York is more than I can well afford. That my absence so long from the State is a serious injury to the republican cause—that it has afforded & will afford busy & intriguing men an opportunity to further their pernicious projects & that my residence in N. Y. would give me an opportunity of detecting & controlling these conspiracies. In the confidence of friendship I may surely mention these circumstances without vanity—and also that in point of capacity & character there can be no solid objection—I am also a resident part of the year and am possessed of a large freehold there. To this I may add that so far as I can collect the general sentiment, it is the universal wish of the republicans of the Southern District.

Objections may however be exhibited to the measure and some of them of some force.

It may be said that offices go into particular families—To this it may be replied that as it respects yours, the objection is of no weight—That not one of them holds an office in the State or Gen<sup>l</sup> Gov<sup>t</sup> by *appointment* or that is strictly speaking a lucrative one To the observation, that my political destination is already marked out by the gov<sup>t</sup> & that I ought to serve

out the allotted time, it may be answered, that the gov<sup>t</sup> may when they please alter that destination.

To objections arising from delicacy on your account, it may be replied, that an appointment springing from the almost unanimous wish of the party in the City & whole District can never be charged with favoritism—but that the event would in all probability take place, if you were not the chief Magistrate—and that your elevation ought not to injure your friends.

Youth can be no solid argument against the measure—A Senator of the U. S. is surely fit to be Mayor of N. Y.—It may be added that the latter situation from its influence on the next Presidential Election is among the most important positions in the U. States.<sup>1</sup>

DeWitt Clinton's arguments in his own behalf were sufficiently convincing to the governor and the council. The appointment was made, he resigned his seat in the senate and in the fall of 1803 returned to resume his leadership of the republican forces in New York.

In the summer of the year preceding Clinton's return, James Cheetham, the violent editor of the "American Citizen and Watch-Tower," had begun the first open attack upon the character and career of Vice-President Burr.<sup>2</sup> It was the signal on both sides for a furious fusillade of recriminating pamphlets and scandalous press articles which during the next few years only increased the intensity of its fire and eventually accomplished the downfall of the object of its attack. Of the violent personalities that were thrown into this warfare of many words; of the reputations that were sought to be blasted; of the lies and deceptions and chicaneries; of the intimacy of DeWitt Clinton's connec-

<sup>1</sup> DeWitt Clinton to George Clinton, September 11, 1803; George Clinton, *Public Papers*, xxvii, 7180.

<sup>2</sup> *A View of the Political Conduct of Aaron Burr*, published in July, 1802; announced in the *Albany Register*, July 9, 1802.

tion with Cheetham; of the frequent recourse to the duelling grounds across the river beginning with the murder of Hamilton's youthful son and ending with the contest which cost the father his life; of DeWitt Clinton's passage of arms with John Swartwout; of all these things little need be said, for they are beside the purpose. It is perhaps worthy of record only that in the midst of this chaos of parties in New York accusations of discrimination in the distribution of the patronage played no small part. And it seems patent that aside from the purity or baseness of Clinton's motives the disposition which he made of the offices within his control in 1801 gave rise to a spirit of acrimonious grievance which was largely responsible for the subsequent embroilment of politics within the state.

It is difficult to trace with certainty the evolution of policies in the distribution of governmental patronage. The motives of those who made the distribution are not always apparent. The facts are more or less elusive, and all of them are perhaps never obtainable. There is constant danger under such circumstances of yielding to the temptation to generalize from a few specific instances. Yet viewed as a whole the history of the early patronage, both in the national government and in New York, presents a certain consistency of development. From the year 1777, when New York was transformed from colony to state, down to the close of his long term as governor, George Clinton was face to face with conditions very similar to those which Washington encountered during the first years of his administration. There were no political parties, and all the offices were filled with men of their own appointment. Political considerations, therefore, played no part in the choice of candidates, and the question of removal from office did not arise. If the attitude of candidates toward

the adoption of the constitution be considered political in its character, we have seen that Washington did not allow himself to be influenced by it to any appreciable extent. In New York George Clinton adopted much the same policy toward the friends and opponents of the constitution, and even after the rise of political parties he exhibited conspicuous liberality in the choice of governmental officers. It seems reasonably safe to conclude, therefore, that there was during the first few years of the government under the constitution little trace of anything that might be termed the beginnings of a system of spoils.

It was the federalists who made the first step in the direction of establishing the spoils system. The federalist council under George Clinton began the work in New York and, in spite of the governor's resistance, prosecuted the policy of political appointments with some vigor. When John Jay became governor he continued the work already begun by the council. And the policy pursued by Jay and the federalists in New York was paralleled by John Adams when he became President of the United States two years later. The essential feature of this policy was the exclusion of all republicans from office. Some removals were made by the federalists both in the national government and in New York, but in neither case were they sufficiently numerous for it to be said that a policy of removal was inaugurated. It has been pointed out, however, that the incentive to make removals was not pressing. Many of the officeholders appointed by Washington and George Clinton had upon the rise of political parties become federalists, and in New York the constitutional requirement of a frequent renewal of commissions permitted, in the case of the smaller offices, the substitution of federalists for republicans without the necessity of dismissal. So effectual was the policy which the federalists applied to the conditions which they

found that before the close of the few years of their power almost the whole number of the appointive offices had been occupied by them.

It was, therefore, largely a new situation which the republicans faced in 1801 when the first change of parties in the nation placed them in power. All of the offices were in the hands of their political opponents to the total exclusion of their own party. The general policy which they pursued was to make room for the excluded republicans by removing federalist office-holders until an approximate proportion of offices should be held by each party. In its method this policy appeared more violent than that adopted by the federalists; in its results it was perhaps milder.

How DeWitt Clinton carried out this scheme of distribution in New York has been examined in detail. In summarizing, it is sufficient to reiterate that while the system which he instituted was more radical than anything which preceded it, yet it fell far short of a total dismissal of the federalists in office and was at least partially justified by the exclusive policy which had been pursued by the retiring federalists.



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